



## Legislation Text

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**File #:** 18-1622, **Version:** 1

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Community Development Services, Environmental Management Department, recommending the Board consider the following:

- 1) Approve and authorize the Chair to execute Contract Change Order No. 1 with Doug Veerkamp General Engineering, Inc., in the amount of \$71,768.37 for the Union Mine Disposal Site - 2017 Storm Damage Repair Project, PW 17-31190, Contract 2682, retroactive to work completed between June 19, 2018 through August 31, 2018;
- 2) 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 bids would thus be undesirable, impractical, or impossible;
- 3) Approve and authorize the Chair to sign the Notice of Acceptance with Doug Veerkamp General Engineering, Inc., for the Union Mine Disposal Site - 2017 Storm Damage Repair Project, PW 17-31190, Contract 2682; and
- 4) Approve and authorize the Clerk of the Board to release the Payment and Performance Bonds to the Surety upon notification from the Environmental Management Department, after the one (1) year guarantee period. (Est. Time: 5: Min)

**FUNDING:** Non-General Fund / County Service Area No. 10 Funds, with Environmental Management Department staff working with the Federal Emergency Management Agency to obtain emergency reimbursement.

### **DISCUSSION / BACKGROUND**

Beginning in early January 2017, a series of heavy rainstorms over approximately eight (8) weeks severely damaged areas of El Dorado County, including roadways, parks, and areas within the active and inactive portions of the Union Mine Landfill and adjacent support areas of the disposal facility property. The damages caused by the 2017 rainstorms, including the damages to the Union Mine Disposal Site, were presented to the Board on February 27, 2017 (Item 1, File No. 17-0242).

Following the conclusion of the wet weather season, the Environmental Management Department (Environmental Management), and its on-call landfill engineering consultant, Tetra Tech BAS, Inc. (Tetra Tech), assessed the extent of damages and developed the Contract Documents, including the scope of work and cost estimate to complete the work, for the Union Mine Disposal Site - 2017 Storm Damage Repair Project (Project). In addition, Environmental Management worked with the California Office of Emergency Services (CalOES) and the Federal Emergency Management Agency (FEMA) to identify damages that would, and would not, qualify for potential reimbursement.

On September 19, 2017 (Item 11, File No. 17-0958), the Board approved the delegation of authority to the Chief Administrative Officer, in conjunction with the Environmental Management Director, to: adopt and approve the Plans and Contract Documents; authorize advertisement for bids; award the Construction Contract to the lowest responsive, responsible bidder; approve and sign the

Construction Contract, pending final approval by County Counsel and Risk Management; and approve other minor changes to the bidding process as afforded to similar emergency projects.

Due to unforeseen delays with the estimated timeline and competitive bidding process, it was determined that there would not be sufficient time remaining in the construction season to bid, award, and complete the Project prior to the beginning of the wet weather season, and therefore, it was in the best interest to postpone the bidding process. In anticipation of these delays, Environmental Management had several temporary repairs completed at the Project site in an effort to prevent further damage during the winter.

The Project was released for bid on January 5, 2018, and awarded to Doug Veerkamp General Engineering, Inc. (Veerkamp) on February 26, 2018. Environmental Management intended to issue the Notice to Proceed for the Project in April of 2018; however, due to budget constraints and an extended wet weather season which required additional time for portions of the Project site to completely dry out, the Notice to Proceed was issued to Veerkamp on June 18, 2018, with an effective start date of June 19, 2018, and a completion time of 65 working days.

Shortly after Veerkamp began work on the portion of the Project for the South Sedimentation Basin, several unknown and/or unforeseen issues were discovered that needed to be addressed and it was determined that revisions to the Plans would be necessary. Following consultation with Tetra Tech and Geosyntec Consultants, Inc. (Geosyntec), Environmental Management's Construction Quality Assurance consultant for the Project, Environmental Management approved and authorized revisions to the Plans and the additional work required in order to repair multiple areas of the Project site to pre-storm conditions.

Additional items of work not covered under the Contract included, but were not limited to, the following:

- ☐ Dewatering of the South Sedimentation Basin to allow for work to continue;
- ☐ Design and construction of two (2) concrete cutoff walls near the vertical standpipe to allow for drainage restoration;
- ☐ Placement of clay barrier to prevent future erosion in the South Sedimentation Basin;
- ☐ Increase the dimensions of the headwall in the South Sedimentation Basin; and
- ☐ Installation of erosion control measures including, but not limited to, additional erosion control blanket, straw wattle, and hydroseeding.

While some of the costs were easily identifiable upfront, the majority of the work required continued efforts between Environmental Management, Veerkamp, Tetra Tech, and Geosyntec to research the Project site's history of plans and identify the best methods to address the issues. Given the time this would take, Environmental Management directed Veerkamp to move forward with some of the items included in this Change Order No. 1 as well as continuing with the remaining work on the Project with the understanding that as the additional costs and desired solutions were determined, one (1) change order would be issued to account for all revisions to the Plans, additional work, and additional costs. Because the extent of all the costs and additional work continued to evolve, it was determined that it would be best not to stop work on the Project and to bring one (1) final change order to account for all final costs and additional work to the Board for approval. Veerkamp has since completed all work per the Contract and the proposed Change Order No. 1 (Attachment A).

Waiver of Competitive Bidding

The Board's execution of Change Order No. 1 will push the cumulative change order value to 16.14% of the original Contract amount. Public Contract Code section 20137 requires that changes to public works contracts 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 bids 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 support the conclusion that competitive bidding for the work described in Change Order No. 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 work in Change Order No. 1 is functionally integrated with the Project as a whole. Veerkamp and its subcontractors were already mobilized onsite and working on the Project. Stopping the Project multiple times for unknown periods likely would have resulted in Veerkamp adding additional costs for mobilization and demobilization of equipment. These factors allow the integration of the Change Order No. 1 work to be successful and maximize the cost efficiency from the Project;
- 2) Advertising and competitive bidding for the changes to the Project would have resulted in delays in Project completion. In addition, because there were many unknowns related to the revisions to the Plans and costs for the South Sedimentation Basin, it would have resulted in multiple starts and stops of work and potentially would have resulted in multiple change orders requiring competitive bidding and Board approval; and
- 3) Competitive bidding requires award to the lowest responsible bidder. This could result 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.

In addition, by delaying the Project to allow for time to complete a competitive bidding process for the additional work, it would have resulted in a significant overall Project delay which would have likely jeopardized the Project completion deadline of October, 2018, as established in conjunction with the Union Mine Disposal Site's permitting authorities, specifically the Local Enforcement Agency (LEA) and the Regional Water Quality Control Board (RWQCB).

For these reasons, Environmental Management recommends the Board find that an exception to the competitive bidding requirement exists here and that a waiver of competitive bidding is appropriate.

All Project repairs, including those items of work specified in this Change Order No. 1, were completed on August 31, 2018. Recordation of the Notice of Acceptance will start legal time frames for guarantees, a lien period, and return of retention monies. Recordation of the Notice of Acceptance will also start the one (1) year time frame for releasing the Payment and Performance Bonds to the Surety.

## **PRIOR BOARD ACTION**

See Discussion/Background above.

## **ALTERNATIVES**

The Board could choose not to approve the proposed Change Order No. 1. The contractor would likely then file a claim against the County to recuperate monies expended.

The Board could also choose not to approve the Notice of Acceptance. Environmental Management would make modifications as directed by the Board and return for Board approval of the revised Notice of Acceptance. This would result in a delay of releasing the Payment and Performance Bonds and extend the Contractor's warranty period.

## **OTHER DEPARTMENT / AGENCY INVOLVEMENT**

County Counsel has approved Change Order No. 1 and the Notice of Acceptance.

## **CAO RECOMMENDATION**

It is recommended that the Board approve this item.

## **FINANCIAL IMPACT**

Funding for a portion of this Project was included in the FY 17/18 budget and there is sufficient funding remaining in the FY 18/19 budget to cover the additional Project costs. For the repairs to the South Sedimentation Basin, \$200,000 was included in the FY 17/18 budget, and \$538,400 was included in the FY 18/19 budget for the remaining Project costs.

The total Project cost for construction, as awarded under this Contract and including the amount of Change Order No. 1, is \$516,539.41. However, during the performance of the work, other modifications to various items of work resulted in minor savings as detailed in Change Order No. 1, and the total Project cost for construction work under this Contract is \$504,401.41, which is significantly less than the original Engineer's Estimate. The Engineer's Estimate provided for this Project, completed by Tetra Tech, was \$655,937. The total amount due to Veerkamp under this Change Order No. 1 and in excess of the original Contract amount is \$59,630.37.

Environmental Management is continuing to work with CalOES and FEMA in an effort to seek full or even partial reimbursement for this Project, but is still waiting to receive formal Notice of Determinations from CalOES regarding the full Project eligibility. Environmental Management has also submitted a request to CalOES requesting an extension for the overall Project while the Project's eligibility is further evaluated.

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

- 1) The Clerk of the Board will obtain the Chair's signature on Change Order No. 1;
- 2) The Clerk of the Board will return a fully-executed copy of Change Order No. 1 to Environmental Management for further processing;
- 3) The Clerk of the Board will obtain the Chair's on one (1) original of the Notice of Acceptance;
- 4) The Clerk of the Board will send the fully-executed original Notice of Acceptance to the Recorder/Clerk's Office for recordation within ten (10) days, and forward a copy of the recorded Notice of Acceptance to Environmental Management, Attention: Tom Meyer; and
- 5) One (1) year after the recordation of the Notice of Acceptance, Environmental Management will

verify that all warranty work, if any, has been satisfactorily completed and will notify the Clerk of the Board in writing to release the Payment and Performance Bonds.

**STRATEGIC PLAN COMPONENT**

Infrastructure, Public Safety

**CONTACT**

Greg Stanton, REHS, Director

Community Development Services, Environmental Management Department