



## Legislation Text

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**File #:** 18-1835, **Version:** 1

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Department of Transportation recommending the Board retroactively approve and authorize the Chair to execute Contract Change Order 3 with Granite Construction Company in the amount of \$36,574.00 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 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).

On November 13, 2018 (Item 30), the Board approved Contract Change Order No. 2 (CCO 2), which compensated for extra contract work related to differing site conditions of the footing subgrade at the north abutment of the bridge, which exceeded the 10% contingency amount established for this contract. The scope of work related to CCO 2 included increased quantities of roadway excavation, structure excavation, structure backfill, and structural concrete. CCO 2 also involved an increased quantity of bar reinforcing steel necessary for the retaining wall height increases. However, due to a discrepancy over the additional quantity of bar reinforcing steel, it was decided that inclusion of this item into the contract change order (CCO) would be postponed. The discrepancy has since been resolved and Transportation has elected to include this additional item cost in Contract Change Order No. 3 (CCO 3) instead of issuing a separate supplement to CCO 2.

This CCO 3 provides for the following extra work items performed:

1) Additional bar reinforcing steel as required by the changes in CCO 2, as discussed in the previous paragraph. CCO 3 also includes additional compensation for labor involved (approximately 2 days) in installing the additional bar steel lapped joints that is not accounted for in the amount paid for the quantity increase.

2) Additional structural concrete at the north bridge abutment retaining wall. This concrete was necessary to increase the widths of the two side retaining wall segments in order for the new barrier railing to correctly match the existing bridge railing, as a minor offset was identified in the field and corrected by variably adjusting the wall widths.

3) Drainage culvert installation at Slipout Location #2 (PM 2.6). The 24" diameter culvert installation at Slipout Location #1 (PM 2.7) was adjusted in the field to provide a more favorable outlet location in order to avoid future erosion downslope. This adjustment shortened the total culvert length and the remaining materials were used for a new culvert installation at Slipout Location #2. A culvert at Slipout Location #2 was not originally included in the contract plans; however, after debris clearing a well-defined drainage swale was identified at this location and Transportation determined that installation of a culvert would benefit the site by reducing the runoff flow along the roadside ditch toward Slipout Location #1, which may have contributed to the initial storm damage. Furthermore, Granite was able to utilize the remaining unused culvert segment from Slipout Location #1 to reduce additional costs as part of this improvement.

The work included in this CCO 3 has since been completed and construction of the Project is now complete. Since approval of CCO 2 exceeded its delegated cumulative CCO authority, Transportation was aware that any future CCOs would also require Board approval. 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 3 is now being brought to the Board for retroactive approval. As the Project work is complete, this CCO addresses all extra work performed and no further CCOs will be necessary.

#### Waiver of Competitive Bidding

Execution of CCO 3 will increase the cumulative value of all CCOs on this Project to 13.71% 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 Project supports the conclusion that competitive bidding for the work described in CCO 3 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 change order. Granite would likely file a claim against the County to recuperate monies expended.

### **PRIOR BOARD ACTION**

See Discussion/Background.

### **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 3)	<u>\$ (192,820)</u>
Balance	\$ 1,993,856

Adequate funding for CCO 3 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 3.
- 2) The Clerk of the Board will return a fully executed copy of CCO 3 to Transportation, Fairlane Engineering, attention Matt Smeltzer, for further processing.

### **STRATEGIC PLAN COMPONENT**

Infrastructure

### **CONTACT**

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