



Legislation Text

File #: 18-1591, **Version:** 1

Department of Transportation recommending the Board take the following actions related to the 2018 Elks Club Drive Emergency Road Repair Project, Contract PW 17-31191, CIP 78725, Fenix 2455:

- 1) Retroactively approve and authorize the Chair to sign Contract Change Order 2, in the amount of \$44,926.05, replacing existing substandard structural material to prolong the life of the new roadway; and
- 2) Find that an exception to the competitive bidding requirement exists for the work described in Contract Change Order 2 and that a waiver of competitive bidding is appropriate. (Est. Time: 5 Minutes)

FUNDING: Federal Highway Administration anticipated reimbursement (88.53%), California Disaster Assistance Act anticipated reimbursement (8.60%), Road Fund (2.87%).

DISCUSSION / BACKGROUND

The Board authorized Department of Transportation (Transportation) to advertise the 2018 Elks Club Drive Emergency Road Repair Project (Project) for bids on March 6, 2018 (Item 22). Transportation opened bids on March 29, 2018, and the Board awarded the Project to West Coast Paving, Inc. (West Coast) on April 10, 2018 (Item 10).

The contract documents required work on Tam O'Shanter Drive to replace asphalt concrete that had been destroyed by traffic that was detoured from Elks Club Drive during the time Elks Club was closed. When the contractor began removing the existing destroyed asphalt concrete, it was discovered that the existing road was comprised of approximately two inches of asphalt concrete that had been placed directly on native ground. Replacing this substandard section in kind would not have been an appropriate use of public funds, because the road would have failed prematurely again. Therefore, Transportation staff directed the contractor to construct a road section comprised of 3" of asphalt concrete over 8" of class 2 aggregate base. The removal of the existing asphalt concrete and the placement of the new asphalt concrete were covered by the contract documents and paid for with contract item prices. Transportation issued Contract Change Order (CCO) 2 in the amount of \$44,926.05 to compensate the contractor for the additional excavation and for the purchase, delivery, and installation of 8" of class 2 aggregate base.

This work occurred in September 2018. Transportation suspected the costs associated with this CCO would necessitate retroactive Board approval of the changes, but Transportation staff were reluctant to bring this CCO to the Board until the costs were finalized, which was not until December 2018. In the future, Transportation will endeavor to notify the Board as soon as possible once Transportation realizes that a CCO will require Board approval, even if the final costs are not yet known.

Waiver of Competitive Bidding

Execution of CCO 2 will push the cumulative value of all CCOs on this Project to 16.38% 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 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 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 CCO. The contractor would likely then file a claim against the County to recuperate monies expended.

PRIOR BOARD ACTION

See Discussion / Background Section above.

OTHER DEPARTMENT / AGENCY INVOLVEMENT

County Counsel

CAO RECOMMENDATION

It is recommended that the Board approve this item.

FINANCIAL IMPACT

On April 10, 2018 (Item 10), the Board approved a construction budget of \$701,330. A breakdown of the budget is as follows:

Total construction budget	\$ 701,330.00
Construction management	\$ (116,900.00)
West Coast's bid price	<u>\$ (355,000.00)</u>
Amount remaining for CCOs	\$ 229,430.00
CCOs written to date	<u>\$ 13,225.00</u>

Balance available	\$ 216,205.00
CCO 02	\$ (44,926.05)
Balance available	\$ 171,278.95

Adequate funding for CCO 2 remains in the Project's budget. 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 John Kahling at Transportation (Headington) for further processing.

STRATEGIC PLAN COMPONENT

Infrastructure

CONTACT

Rafael Martinez, Director
Department of Transportation