



Legislation Text

File #: 20-0252, **Version:** 1

Department of Transportation recommending the Board take the following actions related to the El Dorado Trail - Missouri Flat Road to El Dorado Project, CIP 97014 / 36109003, Contract 2778:

- 1) Retroactively approve and authorize the Board Chair to execute Contract Change Order 8 with Westcon Construction Corporation in the amount of \$142,772.44; and
- 2) Find that an exception to the competitive bidding requirement exists for the work described and that a waiver of competitive bidding is appropriate for Contract Change Order 8.

FUNDING: Accumulative Capital Outlay (<1%), Active Transportation Program (66%), Congestion Mitigation and Air Quality Program (25%), Air Quality Management District and Air Pollution Control District Grant (8%). (Federal Funds)

DISCUSSION / BACKGROUND

The contract for the El Dorado Trail - Missouri Flat Road to El Dorado Project (Project) was approved by the Board on April 30, 2019, Item 43, Legistar 19-0627, and Notice to Proceed was issued for June 17, 2019. The Department of Transportation (Transportation) brought an informational item to the Board on October 8, 2019, Item 23, Legistar 19-1421, to inform the Board the possibility of the Project exceeding the 10% contingency amount for Contract Change Orders (CCOs). As stated in that item, Transportation would return to the Board with any subsequent CCO that results in exceedance of the contingency budget with a formal request for the Board to retroactively approve those CCOs.

CCO 8 provides for the following extra work items performed by Westcon Construction Corporation (Westcon):

- 1) Compensating Westcon for the Asbestos Dust Mitigation Plan that was required by El Dorado County Air Quality Management District;
- 2) Compensating Westcon for eight (8) drainage dry wells that were installed and requested by the County to increase rainfall storage in areas with little to no storage;
- 3) Compensating Westcon for 130 LF of Hot Mix Asphalt (HMA) Dike (Type A) placed at Forni Road and Blanchard Road;
- 4) Compensating Westcon for vacuum truck operations to cleanout existing drainage systems adjacent to new drainage systems built with the trail. The County requested cleanout of all existing drainage systems that were being tied into with new drainage systems as the existing systems were mostly clogged with debris;
- 5) Compensating Westcon for reconstruction of the detectable warning surfaces and concrete pad adjacent to the railroad tracks at the west end of the trail to accommodate rail operations;
- 6) Compensating Westcon for additional railroad work including removal and disposal of existing railroad ties, placing new railroad ties, placing new ballast for the ties, hydraulic tamping of the ballast under the ties, replacing the timbers between and adjacent to the railroad tracks, and placing new aggregate up to the timbers at the western end of the Project;
- 7) Compensating Westcon for replacing the existing damaged 12-inch CSP culvert at the Blanchard

Road crossing;

- 8) Compensating Westcon for an additional 109 LF of 6-inch and 50 LF of 8-inch Plastic Pipe for subdrain systems at various locations;
- 9) Compensating Westcon for removing additional debris and material adjacent to the trail. Various debris, including but not limited to, concrete waste, damaged railroad ties, and garbage was uncovered during construction that was outside the scope of normal clearing and grubbing activities;
- 10) Compensating Westcon for furnishing and installing six (6) steel pipe bollards at Blanchard Road to the signal controller cabinet;
- 11) Compensating Westcon for constructing weakened plane joints and expansion joint(s) in Retaining Wall #5;
- 12) Compensating Westcon for additional trenching required for the pedestrian signal at Forni Road;
- 13) Compensating Westcon for additional thermoplastic pavement markings and relocating signs associated with the pedestrian signals at Forni Road and Blanchard Road;
- 14) Compensating Westcon for installing Type K-1 Object Markers at the ends of Hot Mix Asphalt Dike along Forni Road and Blanchard Road. Compensation also includes trimming of vegetation for signage at Forni Road; and,
- 15) Compensating Westcon for additional reports and inspections required through coordination with the California Regional Water Quality Control Board.

Westcon will accept a lump sum payment in the amount of \$142,772.44 for the noted items of work.

The work included in CCO 8 has since been completed and construction of the Project is close to completion. Since approval of CCO 8 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 Westcon were directed to stop work while this matter was taken to the Board for consideration, Westcon would file delay claims that would expose the County to significant additional costs that might not be reimbursed. Therefore, Transportation staff directed Westcon to proceed with the CCO 8 work items and is now being brought to the Board for retroactive approval. As the Project work nears completion, this CCO addresses all extra work performed and no further CCOs will be necessary.

Waiver of Competitive Bidding

Execution of CCO 8 will increase the cumulative value of all CCOs on this Project to 13.51% 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 8 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. Westcon was 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 these change orders. Westcon would likely file a claim against the County to recuperate monies expended.

PRIOR BOARD ACTION

The Board approved the Project for advertisement for bids on March 5, 2019, Item 13, Legistar 19-0156.

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 \$4,593,000 was approved by the Board on December 17, 2019, Item 54, Legistar 19-1750. A breakdown of the budget is as follows:

Total Project budget	\$ 4,593,000
Planning, design, and right of way	\$ (845,000)
Construction management	\$ (418,000)
Westcon's bid price	<u>\$ (2,618,755)</u>
Amount remaining for CCOs	\$ 711,245
CCOs written to date (excluding CCO 8)	<u>\$ (252,265)</u>
Balance	\$ 458,980

Adequate funding for CCO 8 remains in the Project's budget that was presented to the Board on December 17, 2019. 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 8.
- 2) The Clerk of the Board will return a fully executed copy of CCO 8 to Transportation, Fairlane Engineering, attention Matt Smeltzer, for further processing.

STRATEGIC PLAN COMPONENT

Infrastructure

CONTACT

Rafael Martinez, Director
Department of Transportation