



## Legislation Text

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**File #:** 20-0875, **Version:** 1

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Department of Transportation recommending the Board take the following actions related to the 2020 Various West Slope Pavement Rehabilitation Projects, Contract 4674:

- 1) Approve and authorize the Board Chair to execute Contract Change Order 4 with Teichert Construction in the amount of \$83,183; 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 4.

**FUNDING:** Road Maintenance and Rehabilitation Act of 2017. (SB1 - RMRA) (State)

### **DISCUSSION / BACKGROUND**

The contract for the 2020 Various West Slope Pavement Rehabilitation Projects (Project) was approved by the Board on May 5, 2020, Item 13, Legistar 20-0417, and Notice to Proceed was issued for June 5, 2020. Transportation wrote two Contract Change Orders (CCO) to cover the lowering of manholes, valves, and AT&T manholes in Cameron Park Subdivision, Diamond Springs Business Park and Roads of Pollock Pines prior to the grind and pave. Additionally, a third CCO was written to cover the raising of iron located in the Cameron Park Subdivision after the paving was completed. Transportation is now returning to the Board with one (1) subsequent CCO that results in exceedance of the contingency budget with a formal request for the Board to approve CCO 4 for the raising of iron in Diamond Springs Business Park and Pollock Pines after paving is completed.

CCO 4 provides for the following extra work items performed by Teichert Construction:

- 1) Compensating Teichert Construction for the raising of manholes, valves and AT&T manholes; and
- 2) Compensating Teichert Construction for additional traffic control costs associated with the raising of iron.

The work included in CCO 4 has not been completed yet and construction of the Project is close to completion. Since approval of CCO 4 will exceed its delegated cumulative CCO authority, Transportation staff directed Teichert Construction to delay work associated with the CCO 4 work items and is now bringing CCO 4 to the Board for approval. As the Project work nears completion, this CCO addresses all extra work performed and includes an additional 10 working days so no further CCOs will be necessary.

### **Waiver of Competitive Bidding**

Execution of CCO 4 will increase the cumulative value of all CCOs on this Project to 13.59% 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 4 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. Teichert 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 chose not to approve the change order and the utilities would not be raised in Diamond Springs Business Park or Roads of Pollock Pines.

#### **PRIOR BOARD ACTION**

The Board approved the Project for advertisement for bids on March 10, 2020, Item 15, Legistar 20-0209.

The Board awarded the Project to Teichert Construction on May 5, 2020, Item 13, Legistar 20-0417.

#### **OTHER DEPARTMENT / AGENCY INVOLVEMENT**

N/A

#### **CAO RECOMMENDATION / COMMENTS**

Approve as recommended.

#### **FINANCIAL IMPACT**

Total funding for the Project in the amount of \$2,092,241.65 was approved by the Board on May 5, 2020. A breakdown of the budget is as follows:

Total Project budget	\$2,092,241.65
Construction management	\$ (251,069.00)
Teichert's bid price	<u>\$(1,673,793.32)</u>
Amount remaining for CCOs	\$ 167,379.33
CCOs written to date (excluding CCO 4)	<u>\$ (143,250.50)</u>
Balance	\$ 24,128.83

Adequate funding for CCO 4 remains in the Division's recommended budget that was presented to the Board on June 9, 2020. 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 4.
- 2) The Clerk of the Board will return a fully executed copy of CCO 4 to Department of Transportation, Maintenance and Operations, attention Brian Mullens, for further processing.

**STRATEGIC PLAN COMPONENT**

Infrastructure

**CONTACT**

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