



Legislation Text

File #: 20-1507, **Version:** 1

Department of Transportation recommending the Board take the following actions related to the Green Valley Road Slipout Repair Project, CIP 78707 / 36102008, Contract 2776:

- 1) Retroactively approve and authorize the Board Chair to execute Contract Change Order 5 with Drill Tech Drilling and Shoring, Inc. in the amount of \$169,326.37; 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 5.

FUNDING: Federal Highway Administration anticipated reimbursement (88.53%), California Disaster Assistance Act anticipated reimbursement (8.6%), and RSTP Exchange Funds - Caltrans (2.87%). (Local, State, and Federal Funds).

DISCUSSION / BACKGROUND

The contract for the Green Valley Road Slipout Repair Project (Project) was approved by the Board on January 29, 2019, Item 21, Legistar 18-1967, and the Notice to Proceed was issued for June 27, 2019. Project construction began in July 2019. The first item of work for Drill Tech Drilling and Shoring, Inc. (Drill Tech) was to identify actual location(s) of the broadband fiber optic utility existing at the site. The Project plans included anticipated depths for the utility based on as-built drawings provided by the utility company. However, after unsuccessful attempts to locate the utility, it was discovered that the fiber optic line was installed at much greater depths than was originally anticipated. The Department of Transportation (Transportation) directed Drill Tech to pothole the additional depths and locations as extra work. After coordination with the utility company, it appeared that the fiber optic line would require relocation in order for the Project to be constructed. Accordingly, Transportation directed Drill Tech to demobilize equipment from the site, also as extra work. On June 30, 2020, after further investigation of the fiber optic line location, the utility company notified the County they will not be relocating the line and will assume all risk in the event the line is damaged during construction. After discussion of the Project status and circumstances with County Counsel, Transportation directed Drill Tech to remobilize the site and resume construction.

To date, Transportation has issued four Contract Change Orders (CCOs), for a cumulative contingency amount of \$66,457.44 or 7.01% of the original contract amount. These CCOs included the additional potholing work to identify the location of the fiber optic line and demobilization of Drill Tech. Since the Board has authorized a contingency budget of \$94,767.70 or 10% of the original contract amount, any future CCOs resulting in a cumulative contingency encumbrance over this amount would require Board approval.

Transportation brought an informational item to the Board on October 8, 2019, Item 22, Legistar 19-1420, to inform the Board the possibility of the Project exceeding the 10% contingency amount for the 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 5 provides for the following extra work items performed Drill Tech:

- 1) Compensating Drill Tech for remobilization of equipment and materials to the Project site, additional clearing/grubbing, and other site preparation as necessary to resume work;
- 2) Compensating Drill Tech for annual labor wage and fringe increases from 2019 to 2020 as a result of the delay;
- 3) Compensating Drill Tech for annual equipment cost increases from 2019 to 2020 as a result of the delay;
- 4) Compensating Drill Tech for increases related to the cost of materials and subcontractor work; and
- 5) Compensating Drill Tech for various extra work items, such as extended quantities of rock slope protection, hot mix asphalt, traffic stripe, and furnishing/installing guardrail and delineators within the slope repair limits.

Drill Tech will accept a lump sum payment in the amount of \$169,326.37 for the noted items of work.

The remobilization and extra work items included in CCO 5 have since been completed and construction of the Project is also complete. Since approval of CCO 5 exceeded its delegated cumulative CCO authority, Transportation was aware that any future CCOs would also require Board approval. However, in order to complete the work ahead of the winter season, Transportation needed to direct Drill Tech to resume work in early August. If the remobilization work was further postponed until Board approval, the completion date would likely be pushed to November or December. Therefore, Transportation staff directed Drill Tech to proceed with the CCO 5 work items and is now being brought to the Board for retroactive approval.

Waiver of Competitive Bidding

Execution of CCO 5 will increase the cumulative value of all CCOs on this Project to 24.88% 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 5 would have been undesirable and impractical and would not have resulted in the best economic result for the public since each of the items of CCO work is functionally integrated with the base Project and the nature of the CCO is related to the utility delay incurred by Drill Tech, rather than extra work that could have been subject to competitive bidding. For this reason, Transportation recommends the Board find that an exception to the competitive bidding requirement exists in this instance and that a waiver of competitive bidding is appropriate.

ALTERNATIVES

The Board could choose not to approve the change order. Drill Tech 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 August 28, 2018, Legistar 18-1250, Item 27.

OTHER DEPARTMENT / AGENCY INVOLVEMENT

County Counsel

CAO RECOMMENDATION / COMMENTS

Approve as recommended.

FINANCIAL IMPACT

Total funding for the Project was approved by the Board on June 26, 2018, Item 61, Legistar 18-0616. The construction contract was awarded by the Board on January 29, 2019, Item 21, Legistar 18-1967. The total approved budget for the construction phase is \$1,213,444.70, which includes a contingency of \$94,767.70. Approval of CCO 5 results in a contingency budget exceedance in the amount of \$141,016.11. The resulting net additional County cost is estimated at \$4,048.00, which will be paid for with RSTP Exchange Funds - Caltrans.

CLERK OF THE BOARD FOLLOW UP ACTIONS

- 1) The Clerk of the Board will obtain the Board Chair's signature on CCO 5.
- 2) The Clerk of the Board will return a fully executed copy of CCO 5 to Transportation, Fairlane Engineering, attention Matt Smeltzer, for further processing.

STRATEGIC PLAN COMPONENT

Infrastructure, Public Safety

CONTACT

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