



Legislation Text

File #: 21-1420, **Version:** 1

Department of Transportation recommending the Board take the following actions related to the Industrial Drive/ Missouri Flat Road Temporary Signal Project, Capital Improvement Program project number 73366/36105053, Contract 4455:

- 1) Retroactively approve and authorize the Chair to execute Contract Change Order 4 with Tim Paxin's Pacific Excavation, Inc. in the amount of \$80,000, for emergency repair work due to extensive damage to the temporary signal system caused by a vehicle collision; 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 Fund with possible reimbursement from Insurance Company.

DISCUSSION / BACKGROUND

The construction contract for the Industrial Drive/ Missouri Flat Road Temporary Signal Project (Project) was awarded by the Director of Transportation to Tim Paxin's Pacific Excavation (Pacific Excavation) on February 13, 2020, as delegated by the Board on December 10, 2019, Legistar 19-1730, Item 30. The Notice to Proceed was issued for April 6, 2020. A vehicle collision occurred on August 21, 2021 causing extensive damage to the temporary signal system. In order to restore operation of the signal system, County directed the contractor to perform the repair work the weekend of August 28 and 29, 2021. The repair work will be tracked in project number 36304001 to keep the repair costs separated from the Capital project.

To date, Transportation has issued three Contract Change Orders (CCOs), for a cumulative contingency amount of \$42,301.50 or 17.06% of the original contract amount. Since the Board has authorized a contingency budget of \$24,802.60 or 10% of the original contract amount, any future CCOs resulting in a cumulative contingency encumbrance over this amount would require Board approval.

CCO 4 provides compensation to Pacific Excavation for repair of the damaged temporary signal system components that were furnished and installed as part of the contract work. Pacific Excavation will accept payment based on force account according to the actual cost of the labor, materials, and equipment with applicable markups for the noted items of work.

In the interest of public safety, Transportation directed Pacific Excavation to perform the signal repair work at their earliest availability, which was during the weekend of August 28 and 29, 2021. Therefore, the CCO 4 work items are now being brought to the Board for retroactive approval.

Waiver of Competitive Bidding

Execution of CCO 4 will increase the cumulative value of all CCOs on this Project to 49.31% 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 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 urgent repairs needed on damage caused by the vehicle collision, 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. Pacific Excavation 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 December 10, 2019, Legistar 19-1730, Item 30.

The Board approved CCO 3 on June 22, 2021, Legistar 21-0082, Item 26.

OTHER DEPARTMENT / AGENCY INVOLVEMENT

N/A

CAO RECOMMENDATION / COMMENTS

Approve as recommended.

FINANCIAL IMPACT

The budget for the temporary signal repairs included in this change order is \$80,000, which will be funded by the Road Fund. The County will seek reimbursement of these funds in a future insurance claim.

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 Transportation, Fairlane Engineering, attention Matt Smeltzer, for further processing.

STRATEGIC PLAN COMPONENT

Infrastructure, Public Safety

CONTACT

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