



## Legislation Text

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**File #:** 22-0728, **Version:** 1

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Department of Transportation recommending the Board take the following actions related to the Merrychase and Country Club - Sidewalks, Class II/III Bikepath and Silva Valley Parkway/Harvard Way Improvements Projects, Capital Improvement Program project numbers 72312/36105025 and 72378/36105036, Contract 4546:

- 1) Retroactively approve and authorize the Chair to execute Contract Change Order 3 with Martin General Engineering, Inc. in the amount of \$120,952.60; 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 3.

**FUNDING:** Congestion Mitigation and Air Quality (CMAQ) (47%), Urban Surface Transportation Block Grant Program (Urban STBGP) (50%), and Regional Surface Transportation Program (RSTP) Exchange and Match Funds - Caltrans (3%). (Federal Funds)

### **DISCUSSION / BACKGROUND**

The contract for the Merrychase and Country Club - Sidewalks, Class II/III Bikepath and Silva Valley Parkway/Harvard Way Improvements Projects (Project) was awarded by the Board on June 8, 2021, Item 42, Legistar 21-0881, and the Notice to Proceed was issued for July 12, 2021. The Project scope includes various bicycle and pedestrian improvements at two separate sites. The first site (Silva Valley/Harvard) is located in El Dorado Hills, adjacent to Rolling Hills Middle School and Oak Ridge High School. The second site (Merrychase/Country Club) is located in Cameron Park, adjacent to Blue Oak Elementary School and Camerado Springs Middle School.

During the course of construction, a number of unanticipated issues arose that required Transportation to authorize extra work not shown in the project plans. These items were related to the discovery of unidentified buried utilities, additional water valve repairs and adjustments, and modifications to retaining wall dimensions based on landscape conflicts. Additional changes included improvements to site drainage, upgrades to the existing traffic signal hardware, various site items to meet Americans with Disabilities Act (ADA) standards, additional pavement delineation and striping work, and other added improvements to various school driveway access locations in coordination with local fire and school administration officials.

To date, Transportation has issued two Contract Change Orders (CCOs) for a cumulative contingency amount of \$88,120, or 7.59% of the original contract amount. Since the Board has authorized a contingency budget of \$116,122.50, or 10% of the original contract amount, any future CCOs resulting in a cumulative contingency encumbrance over this amount would require Board approval.

Transportation submitted a memorandum to the Board on November 9, 2021, to inform the Board of the current contingency status and the likelihood of the Project exceeding the 10% contingency amount for the CCOs. As stated in that memorandum, 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 3 provides for the following extra work items performed by Martin General Engineering, Inc. (Martin):

- 1) Additional tree removal.
- 2) Relocation of the existing irrigation system beyond the limits in the Project plans.
- 3) Replacing an existing water valve manhole with an enclosure box at the request of El Dorado Irrigation District (EID).
- 4) Potholing additional AT&T lines not identified during underground service alert field marking or on the project plans.
- 5) Excavating around, protecting-in-place, and vertical adjustment of additional AT&T lines not identified during underground service alert field marking or in the Project plans.
- 6) Additional asphalt removal, additional concrete placement, and placement of decomposed granite cover at various locations.
- 7) Placing additional concrete retaining curb at various locations to contain landscaping (final quantity exceeding 125% of the bid amount).
- 8) Improving an existing fire access driveway on Country Club Drive.

Additionally, CCO 3 also includes the following remaining extra work items to be performed by Martin pending approval:

- 9) Installation of a tubular railing along the sidewalk ramp near Castana Drive.
- 10) Reconstruction of the retaining wall and sidewalk along Merrychase Drive, adjacent to Camerado Springs Middle School, to accommodate grade adjustments of Pacific Gas & Electric (PG&E) utility vaults lids.

Martin will accept a lump-sum payment of \$120,952.60 for the noted items of work in CCO 3.

#### Waiver of Competitive Bidding

Execution of CCO 3 will increase the cumulative value of all CCOs on the Project to 18.0% 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 Project supports the conclusion that competitive bidding for the work described in CCO 3 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 scope of the Project, 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. Martin would likely file a claim against the County to recuperate monies expended.

## **PRIOR BOARD ACTION**

The Board approved the advertisement for bids on the Project on April 20, 2021, Legistar 21-0495, Item 19.

## **OTHER DEPARTMENT / AGENCY INVOLVEMENT**

N/A

## **CAO RECOMMENDATION / COMMENTS**

Approve as recommended.

## **FINANCIAL IMPACT**

The construction contract for the Project was awarded by the Board on June 8, 2021, Item 42, Legistar 21-0881. The total approved budget for the construction phase is \$1,451,532, which includes a \$116,122.50 contingency budget. Approval of CCO 3 results in a contingency budget exceedance in the amount of \$92,950.10. Funding for this exceedance will be provided with unused Urban STBGP and CMAQ funds that were previously programmed to the Project. There is no net County cost or impact to the Road Fund associated with this item.

## **CLERK OF THE BOARD FOLLOW UP ACTIONS**

- 1) The Clerk of the Board will obtain the Board Chair's signature on CCO 3.
- 2) The Clerk of the Board will return a fully executed copy of CCO 3 to Transportation, Fairlane Engineering, attention Shanann Findley, for further processing.

## **STRATEGIC PLAN COMPONENT**

Infrastructure, Public Safety

## **CONTACT**

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Department of Transportation