



## Legislation Text

File #: 10-0940, Version: 1

Environmental Management Department recommending Board authorize the Director of said department to amend Field Change Order # 001 with Sukut Construction in the amount not to exceed \$50,000 to Change Order #001 in the amount not to exceed \$317,250 for additional work required for the construction of the Cap System, French Drain and Landfill Gas Emission Control System Operable Unit 1 at the Meyer's Landfill and in doing so, find that it is in the public interest to waive competitive bidding for the work described therein.

BUDGET SUMMARY:		
Total Estimated Cost		\$317,250
Funding		
Budgeted	\$	
New Funding	\$	
Savings	\$	
Other	\$	
Total Funding Available	\$317,250	
Change To Net County Cost		\$0

**Fiscal Impact:** There is no change in Net County Cost. Through the pending Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) litigation, the County has obtained funding sources from the County's insurance carriers, Third Party Settlements and the CalRecycle grant (Legislative File 10-0650). These additional costs were not identified in the Final (100%) Remedial Design and associated bid documents and contracts. At this time funding will be secured through settlement revenue sources.

**Background:** The County of El Dorado is in the process of final closure construction activity of the 11 acre Meyers Landfill disposal site. The Meyers Landfill operated from approximately 1947 through 1971 under a series of Forest Service Special Use Permits that were issued to private parties and the County of El Dorado. Waste disposed at the site included municipal solid waste from residential and commercial sources from within the southern Lake Tahoe Basin area. The site stopped receiving waste in 1971 and in 1973 the County closed the landfill and covered the waste with an interim soil cap.

Since the closing of the site in 1973 several site investigations have been conducted. As a result of these investigations, it was determined that in the best interest of public health and safety, the site would need to be remediated. In January of 2002, the United States Forest Service (USFS) issued a Feasibility Study and Proposed Plan for remediation of the site, which was later modified and termed the Supplemental Remedial Investigation/ Feasibility Study (RI/FS). The RI/FS calls for capping the

waste mass with an impermeable multi-layer cover system, installation of a passive landfill gas venting system, relocation and consolidation of a portion of the waste mass directly above a South Tahoe Public Utility District (STPUD) sewer line, and installation of a surface water collection and retention system, also known collectively as the Remedial Action. The Remedial Action included the Meyers Landfill Final (100%) Remedial Design, prepared for the Forest Service by the Engineering/Remediation Resources Group, Inc. (ERRG). The proposed Remedial Action to be implemented at the Meyers landfill site was finalized by the Forest Service in the Record of Decision (ROD) executed on November 15, 2007. The ROD, as further described in the Final (100%) Remedial Design, was incorporated into the Partial Consent Decree (PCD), which is to be issued to the County of El Dorado by the Federal Court, Eastern District of California. Since the PCD will not be issued until late this summer or sometime thereafter, the Forest Service issued the County of El Dorado a Unilateral Administrative Order (UAO), which allowed the County to move forward with the closure construction of the Meyers Landfill. The UAO is similar in content to the PCD.

On November 11, 2009, the Board authorized the Environmental Management Department to release and advertise an Invitation to Bid for the Meyers Landfill closure construction based upon the Final (100%) Remedial Design provided by the U.S. Forest Service. On January 26, 2010, the Board awarded the Meyers Landfill closure construction contract to Sukut Construction (Sukut), with closure construction anticipated to begin summer of 2010.

Pursuant to the UAO and the PCD, the County was ordered to implement the Forest Service issued Final (100%) Remedial Design. After Sukut initiated closure construction activities it was discovered that the Final (100%) Remedial Design prepared by ERRG and approved by the Forest Service, which was the basis for determining construction costs and incorporated into construction bids and contracts, was inaccurate, incomplete, and did not reflect 100% of the necessary construction activities required to complete the final closure of the Meyers Landfill. The Final (100%) Remedial Design indicated a limit of waste within an 11 acre area of the site. Sukut encountered waste in several locations extending well beyond the indicated limit in the Final (100%) Remedial Design. The Forest Service has provided direction that in some areas, this waste must be relocated, however in other areas, the cap boundary will be extended to cover the waste in place. In addition, it appears that the Final (100%) Remedial Design did not capture the total volume of existing waste that needs to be relocated. ERRG has revised the estimated waste volume to be more than double the original estimate. There were also several additional wells and/or piezometers discovered that were not included in the Final (100%) Remedial Design that require abandonment.

As a result of site conditions identified by Sukut that were previously unknown, ERRG has provided a draft revised Final (100%) Remedial Design, which increases the total acreage included in closure construction from 11 acres to approximately 12 acres requiring an impermeable cap, and which results in an additional 1 to 2 acres requiring earthwork and/or waste relocation activities. There are also yet to be determined impacts on the design of the surface water collection system and other design features that will be addressed, if necessary, in a subsequent change order.

**Reason for Recommendation:** Due to rapidly changing site conditions outside of the original scope of the project that were not accurately identified in the Final (100%) Remedial Design, such as additional potholing, clearing and grubbing, and waste relocation, the Environmental Management Department issued Field Change Order #001 in the amount of \$50,000 to Sukut on August 10, 2010, in an effort to keep the project moving forward. Field Change Order #001 was necessary to provide Sukut with authorization to conduct required closure construction activities outside the originally

approved Final (100%) Remedial Design. The amount of this change order has been exhausted.

On August 4, 2010, a conference call was held between the Forest Service, the County of El Dorado, and respective engineering consultants, to discuss the additional work that will be necessary as a result of the discovery of additional waste that was not included in the Final (100%) Remedial Design. It was agreed upon by all parties that as the engineer of record for the project, ERRG would revise the Final (100%) Remedial Design. ERRG's draft revised design indicates increases in site work, waste relocation and capping previously quantified in the bid schedule in the Sukut contract, as well as some necessary construction activity not previously itemized in the bid schedule. See attached Change Order for specific details.

Public Contract code section 20137 requires that changes to public works contracts exceeding ten percent 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 bids would thus be undesirable, impractical, or impossible. (*Graydon v. Pasadena Redevelopment Agency* (1980) 104 Cal.App.3d 631, 635-636.) 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 eliminating favoritism and corruption, preventing waste, and obtaining the best economic result for the public. (*Id.* at p. 636) Accordingly, where competitive proposals work an incongruity and are unavailing as affecting the final result, or where competitive proposals do not produce any advantage, or where it is practically impossible to obtain what is required and to observe such form, competitive bidding is not applicable. (*Ibid.*)

It is the opinion of the Department and County Counsel that execution of the proposed change order meets the public's best interest standard as described above for the following reasons:

#### Unilateral Administrative Order

The remedial work at the Meyers landfill site is being performed under a Unilateral Administrative Order issued by the Federal Government requiring the County to perform the work necessary to remediate the site. The failure to comply with the Order can result in the issuance of penalties of up to thirty-seven thousand five hundred dollars (\$37,500) per day (paragraph 103 of the UAO) if in the judgment of the Forest Service, the delay in performance of the order is not properly justified. (paragraph 95 of the UAO). The time necessary to competitively bid the additional work will delay the initial stages of the remediation project and could subject the County to significant penalties under the UAO.

#### Earlier Public Benefit

As described above, the conditions at the Meyers landfill site have been determined by the Forest Service to constitute a threat to the public health and safety. The remediation of the contamination of the groundwater is of the utmost importance especially in an environmentally sensitive area such as South Lake Tahoe. The delay occasioned by having to competitively bid the additional work would allow the conditions at the site to remain unchanged for an additional construction season. Given the short construction season in the Tahoe area, if the matter were competitively bid, the consolidation of the waste materials would not occur until next year's construction season beginning in May or June of 2011. This has the potential to push the completion of the remediation at the site into the 2012

construction season thereby not only continuing the threat to the public health and welfare for an extended period of time, but also likely increasing the costs of the project by requiring contractors to demobilize and mobilize several times over the course of multiple construction seasons. By allowing the contractor already on site performing the waste relocation to continue by issuance of the requested change order the remediation will move forward more quickly and will likely result in long term savings in the construction of the project.

### Enhanced Public Safety

The Meyers landfill site is in a remote location which requires that construction equipment be moved along public roads through rural areas of the County. The fewer times that construction equipment has to travel along these public roads, the safer it is for the traveling public. This would dictate that by retaining the contractor on site to perform the work, the risk to the public from increased traffic of construction equipment is minimized.

In addition to the above reasons that demonstrate that executing the proposed change order meets the public interest as described by the California Civil Code, the Department has also concluded that executing the proposed change order will likely result in a cost savings to the public because:

There will be lower contractor mobilization costs. The contractor is already on site performing the same type of work contemplated by the change order.

No additional Contractor insurance costs.

No administrative costs related to project advertisement.

No administrative costs related to the project award.

Reduced County overhead costs. The construction management team including the outside Construction Management consultant and Construction Quality Assurance consultant are already on site.

As described above, the issuance of the proposed change order best serves the public interest from a public health and safety standpoint. Furthermore, procuring the work through competitive bidding would not produce any appreciable advantage to the County or its residents.

**Action to be taken following Board approval:** Chair to authorize Director of the Environmental Management Department to amend Field Change Order #001 to Change Order # 001 with a not to exceed amount of \$317,250.

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