



Legislation Text

File #: 11-0210, **Version:** 1

Environmental Management Department recommending the Board authorize the Director of said department to sign the first amendment, effective December 15, 2010, to Change Order #015 with Sukut Construction for an increase in the amount of \$775,000 for the total not to exceed amount of \$1,000,000 for additional work required due to a number of issues, errors and omissions with the Final (100%) Remedial Design provided to the County by the U.S. Forest Service for the construction of the Cap System, French Drain and Landfill Gas Emission Control System Operable Unit 1 at the Meyers Landfill (Public Works Contract No. 013-PW-09/10-BOS) and in doing so, find that it is in the public interest to waive competitive bidding for the work described therein.

FUNDING: \$750,000 from the CalRecycle Waste Board Grant and \$250,000 from the Meyers Landfill Disbursement Account currently held by the U.S. Forest Service.

Fiscal Impact/Change to Net County Cost: \$750,000 from the CalRecycle Waste Board Grant and \$250,000 from the Meyers Landfill Disbursement Account currently held by the U.S. Forest Service.

Background:

Work commenced at the Meyers Landfill on June 21, 2010. After work began it was determined that there was significantly more waste requiring relocation than was indicated in the Final (100%) Remedial Design provided by the U.S. Forest Service. Therefore, 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 indicated 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.

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 was exhausted. Therefore, on August 24, 2010 the Board authorized the 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 (Legistar Item 10-0940).

Subsequent to Sukut receiving the draft revised Final (100%) Remedial Design from ERRG the following occurred; (1) additional waste was discovered that required relocation on the South end of

the site; (2) the STPUD sewer line location was not properly identified in the Final (100%) Remedial Design which resulted in additional waste relocation on the East side of the landfill and regrading of previously completed slopes; (3) waste extended deeper than indicated in the Final (100%) Remedial Design in the area of the STPUD sewer line increasing the total miscalculation of waste from 34,900 cubic yards in the original Final (100%) Remedial Design to over 100,000 cubic yards; (4) the construction of an additional sedimentation basin was included in the final revised Final (100%) Remedial Design which also required the French drain to be extended by approximately an additional 150 feet; and (5) the depth of clay in the French drain alignment was significantly deeper than indicated in the final revised Final (100%) Remedial Design resulting in the additional removal of over 30,000 cubic yards of soil in order to construct the drain, then return of this material to meet new grade requirements. The cumulative effect of aforementioned issues, errors and omissions with the original Final (100%) Remedial Design not only resulted in very significant increases to the cost of the project, but also resulted in a significant increase in the project duration. As a result, the Meyers Landfill Remedial Action will take two (2) seasons and is scheduled be completed during the 2011 construction season.

Since the project was not completed within a single construction season the Forest Service required the County to implement an extensive site winterization plan over approximately 20 acres in an effort to minimize soil erosion and storm water discharges from the site. The winterization plan included the installation of several thousand linear feet of silt fence and straw wattles, the placement of several thousand sand bags and rock dissipater bags, and the construction of additional infiltration basins, collectively known as best management practices (BMPs).

Due to the construction schedule impacts caused by the combined issues, errors and omissions with the Final (100%) Remedial Design, site winterization could not be implemented prior to October 15th, the normal end date for construction in the Tahoe basin. As a result, the winterization plan was implemented during periods of rain, sleet and snow, thereby slowing down the implementation as well as causing the contractor to repeatedly repair eroded portions of the site and damaged BMPs.

The Forest Service has also required that the County conduct periodic site evaluations and perform maintenance of BMPs throughout the wet weather season until construction resumes in the summer of 2011.

Reason for Recommendation:

This change order amendment is necessary in order to comply with Forest Service requirements for site winterization and maintenance, Lahontan Regional Water Quality Control Board requirements for construction sites, and State Water Resources Control Board site discharge requirements.

On December 14, 2010 the Board authorized the Director of the Environmental Management Department to execute Change Order #015 with a not to exceed amount of \$225,000 for the winterization plan (Legistar Item 10-1291). The original estimated amount of \$225,000 was exhausted prior to the completion of this work. Due to the highly erosive nature of the onsite soils, early wet weather season, ongoing site damage and erosion caused by winter storms, and the need to repair existing BMPs, as well as construct new BMPs in order to comply with Forest Service and Lahontan Regional Water Quality Control Board requirements, approximately \$655,000 has been spent to date with an additional \$120,000 anticipated from now until the end of the wet weather season. The additional cost associated with the implementation of the winterization plan and ongoing

site maintenance as necessary during the wet weather season is estimated to be \$775,000 for a total not to exceed amount of \$1,000,000, of which \$655,000 will be paid retroactively.

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 publics best interest standard as described above for the following reasons:

Partial Consent Decree

The remedial work at the Meyers landfill site is being performed under a Partial Consent Decree (PCD) issued by the Federal Government requiring the County to perform the work necessary to remediate the site. The failure to comply with the requirements of the PCD can result in the issuance of stipulated penalties of up to one thousand two hundred fifty dollars (\$1,250) per day per violation (paragraphs 79 and 80 of the PCD). The time necessary to competitively bid the additional work will delay the completion of the remediation project and could subject the County to significant additional penalties under the PCD, including a one time stipulated penalty of four-hundred thousand dollars (\$400,000) for a Work Takeover (paragraph 81 of the PCD), and the right of the Forest Service to receive the benefit of the Countys performance guarantee up to the estimated cost to complete the project (paragraph 47 of the PCD).

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 has been described as 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 current 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 completion of the final cap would not occur until the 2012 construction season, likely increasing the costs of the project even further.

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:

No potential increase to previously established bid schedule costs.

No additional Contractor insurance costs.
No administrative costs related to project advertisement.
No administrative costs related to the project award.

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:

The Director of Environmental Management Department will execute the first amendment, effective December 15, 2010, to Change Order #015 for an increase in the amount of \$775,000 for a total not to exceed amount of \$1,000,000.

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