



Santa Clara Valley Water District

File No.: 17-0873

Agenda Date: 3/13/2018

Item No.: 6.2.

BOARD AGENDA MEMORANDUM

SUBJECT:

Reduction of Construction Contract Retention for the Lower Berryessa Creek Flood Protection Project Phase 2, Brosamer & Wall, Inc., Contractor, Project No. 40174005, Contract No. C0614 (Milpitas) (District 3).

RECOMMENDATION:

Authorize reducing the current construction contract retention of ten percent (10%) to five percent (5%), consistent with the minimum amount required by the California Public Contract Code.

SUMMARY:

On June 28, 2016, the Board awarded the construction contract for the Lower Berryessa Creek Flood Protection Project (Project) to Brosamer & Wall, Inc. (Contractor) in the amount of \$38,876,550, and approved a ten-percent (10%) contingency of \$3,887,655. The project is in the third year of the three-year construction schedule. A reduction to the construction contract retention is recommended since the substantially complex work is complete and the remaining work is of minimal risk, consisting of standard levee and floodwall construction. Taking this recommended action is consistent with statutory requirements.

Project Background

The Lower Berryessa Creek Project, which extends approximately 1.6 miles from its confluence with Lower Penitencia Creek upstream to Calaveras Boulevard, is part of a number of flood protection improvements within the City of Milpitas. This Project will protect the surrounding area by removing approximately 1,800 parcels from the 1% floodplain and provide improved maintenance access to the channel. Construction of the Lower Berryessa Creek Project is being undertaken in 2 phases. Phase 1 was completed in December 2016 and included improvements from the Lower Penitencia Creek confluence up to Abel Street. Phase 2 is currently under construction and includes approximately 1.1 miles of channel improvements upstream of Jacklin Road/Abel Street to Calaveras Boulevard.

Construction Contract Retention

The California Public Contract Code requires public entities to withhold no less than five percent (5%) contract retention for public works construction contracts. Additionally, the code limits retention

amounts to a maximum of 5% unless the governing body finds the proposed project is 'substantially complex' and requires contract retention greater than 5%. On March 22, 2016, the Board found that the Project was substantially complex and required construction contract retention of ten percent (10%). The District is currently withholding this amount.

The determination that the Project was 'substantially complex' was due to the extensive 24-inch diameter cast-in-drilled-hole (CIDH) piles that were installed. As a result of the below ground project conditions and limited space between the pile locations and private property, this Project had a unique level of construction complexity beyond what is customarily encountered. The Contractor has completed about two-thirds (2/3) of the underground construction on the Project. Since the 'substantially complex' work is mostly complete, the circumstances supporting 10% retention no longer exist.

The purpose of staff's recommendation to reduce retention at this time is to allow for release of half (approximately \$1,492,000) of the total retention now instead of the contractor waiting until after the District accepts the Project to receive the full 10% of the contract price withheld. The District would continue to withhold 5% until 35 days after the Project is accepted by the Board and the Notice of Completion is recorded, subject to any withholds required by law or the contract. Taking this recommended action is consistent with statutory requirements.

Previous Board Actions

On March 22, 2016, the Board approved the plans and specifications and authorized advertisement for bids for the construction of the Project.

On June 28, 2016, the Board awarded the construction contract for the Project to Brosamer & Wall in the amount of \$38,876,550, and approved a ten-percent (10%) contingency of \$3,887,655. The Board authorized the Interim Chief Executive Officer (CEO) or designee to approve individual change orders up to the total amount of the contingency, with the Engineering Unit Manager and Deputy Operating Officer to approve individual changes up to \$50,000 and \$100,000 respectively.

On November 14, 2017, the Board approved an increase to the construction contingency sum of the Project by \$1,943,000 to \$5,830,655 to a new total contingency amount of 15% of the Contract Amount.

Contract Change Orders

Since construction started in August 2016, staff has authorized contract change orders totaling \$3,763,608 such as recovery efforts from utility relocation delays, locating unexpected utilities, additional tree removal, and necessary design changes. In the first year of construction, the Project was delayed by utility relocations from PG&E and AT&T. Because of the utility relocation delays, the Project incurred about \$2.2 million in acceleration costs to increase Contractor staff and equipment and to get the Project back on schedule. The Contractor has completed the second year of the three-year construction schedule and plans to complete construction by December of 2018, which is the current contract end date per an approved change order.

FINANCIAL IMPACT:

The recommendation does not result in a financial impact. The approved action reduces the contract retention of 10% to 5% from funds due to Brosamer & Wall, Inc. upon completion and acceptance of the contract.

CEQA:

The recommended action does not constitute a project under CEQA because it does not have a potential for resulting in direct or reasonably foreseeable indirect physical change in the environment.

ATTACHMENTS:

None.

UNCLASSIFIED MANAGER:

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