



County Executive Office
Memorandum

RECEIVED
2011 MAY 20 AM 8:56
CLERK OF THE BOARD
ORANGE COUNTY
BOARD OF SUPERVISORS

May 19, 2011

To: Darlene Bloom, Clerk of the Board
From: Thomas G. Mauk, County Executive Officer 
Subject: Exception to the Rule 21

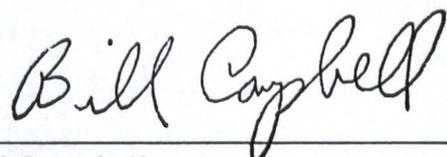
S91A

The County Executive Office is requesting a supplemental for the May 24, 2011 Board Hearing Meeting.

Agency: OC Public Works
Subject: Los Alamitos Pump Station Contract Change Order No. 28.
District: 2nd

Reason for supplemental: To mitigate possibility of claims under Prompt Pay Statute

Concur:



Supervisor Bill Campbell
Chairman, Board of Supervisors

cc: Members, Board of Supervisors
Rob Richardson, Assistant County Executive Officer
Nick Chrisos, County Counsel



RECEIVED SUPPLEMENTAL AGENDA ITEM AGENDA STAFF REPORT

2011 MAY 20 AM 8:56

CLERK OF THE BOARD ORANGE COUNTY BOARD OF SUPERVISORS

S91A

ASR Control

MEETING DATE: 05/24/11
LEGAL ENTITY TAKING ACTION: Orange County Flood Control District
BOARD OF SUPERVISORS DISTRICT(S): 2
SUBMITTING AGENCY/DEPARTMENT: OC Public Works
DEPARTMENT CONTACT PERSON(S): Ignacio Ochoa (714) 667-3213, Octavio Rivas (714) 245-4520

SUBJECT: Los Alamitos Pump Station: Contract Change Order No. 28

Table with 3 columns: CEO CONCUR, COUNTY COUNSEL REVIEW, CLERK OF THE BOARD. Includes budgeted status, current year cost (\$777,825.47), and funding source (Flood Fund 400: 100%).

Prior Board Action: May 25, 2010; June 26, 2007; March 6, 2007

RECOMMENDED ACTION(S)

Approve Contract Change Order No. 28 to Agreement No. D07-061 with SSC Construction, Inc. in the amount of \$777,825.47.

SUMMARY:

Approval of Contract Change Order (CCO) No. 28 to Agreement No. D07-061 with SSC Construction, Inc. in the amount of \$777,825.47 will compensate SSC Construction, Inc. for certain delay costs incurred in the construction of the Los Alamitos Pump Station project that are not disputed by County.

BACKGROUND INFORMATION:

The Los Alamitos Pump Station was constructed in 1957 to provide flood control protection for low lying areas in the City of Seal Beach. During the heavy storm of 1995, lack of capacity at this pump station contributed to the flooding of residential properties in the Seal Beach Leisure World Community. The new facility, currently under construction, will provide approximately 80 percent greater pumping capacity and will significantly reduce the flood risks to the area.

On March 6, 2007, your Board approved Plans and Special Provisions and authorized the Clerk of the Board to advertise the project for bids; and on June 26, 2007, your Board awarded a contract for the project to SSC Construction, Inc. (SSC) in the amount of \$21,706,795. On May 25, 2010, subsequent to

award of the contract, your Board approved CCO Nos. 12 through 15 for Orange County Flood Control District (OCFCD) recommended pump enhancements, utility connection changes, and remediation of unforeseen conditions in a total amount of \$1,021,610.68.

At the time this project was advertised for bids, right-of-way acquisition and certain regulatory permits were still outstanding. It was initially believed that these issues would be satisfactorily resolved in time for the anticipated start of construction, and the contract was awarded. However, subsequent to award of the contract, the California Coastal Commission announced new permit conditions related to the acquisition of a piece of property needed for construction known as the Bryant Property. Ensuing problems with the Coastal Commission permit and Bryant Property acquisition caused substantial delays to the construction schedule through no fault of SSC. Once these issues were resolved and excavation commenced, the excavated material was found to be contaminated with hydrocarbons and was refused by SSC's disposal site. This was an unforeseen condition and work was delayed until the OCFCD and SSC found a resolution to the problem. Shortly thereafter, during dewatering operations, contaminated ground water was encountered along with the release of hydrogen sulfide gas. The odorous gas release caused major concern among the adjacent residents and was subsequently mitigated by SSC and the OCFCD causing significant additional delay to the project. These cumulative delays caused additional costs to both SSC and its subcontractors, including increased material and fuel costs due to marketplace changes during the delay. SSC has asserted that they have incurred additional costs as a result of these delays for which they are entitled to be compensated.

The amount of the change order was determined after extensive discussions with SSC and review of documentation provided by SSC concerning their asserted damages for this period of delay. The recommended CCO does not represent the full amount SSC has claimed as their damages since the OCFCD disputes certain amounts that SSC has claimed as compensable damages. Damages that the OCFCD disputes include extended home office overhead and costs related to SSC's failure to supply pump impellers that meet project specifications. Because of the continuing dispute as to these items, SSC has refused to acknowledge that payment of the recommended CCO amount represents full compensation for damages related to the delay period. The CCO represent payments of all amounts that the OCFCD has determined are legitimate delay damages and supported by adequate documentation of costs incurred by SSC. Because SSC refuses to acknowledge that the recommended CCO is full compensation for all additional costs incurred as a result of the delay period described above, the CCO is being processed as a unilateral CCO.

Compliance with CEQA: On March 6, 2007, Negative Declaration No. IP03-105 was found to satisfy the requirements of CEQA and was approved for this project.

FINANCIAL IMPACT:

N/A

STAFFING IMPACT:

N/A

EXHIBIT(S):

Exhibit A - Contract Change Order No. 28 to Agreement No. D07-061

ATTACHMENT(S):

Attachment A - Original Contract Change Order No. 28 to Agreement No. D07-061 for Execution

**OC PUBLIC WORKS
CONTRACT CHANGE ORDER NO. 28
AGREEMENT NO. D07-061**

**For Construction of: Los Alamitos Pump Station and Retarding Basin,
Facility Nos. C01PS1 and C01B01**

To: SSC Construction, Inc.

You are hereby directed to make the following described changes from the plans and specifications, or do the following described work not included in the plans and specifications for this contract.

Description of work to be done, estimate of quantities and prices to be paid as determined in accordance with the Specifications. In accordance with Section 6-6.3 "Payment for Delays to Contractor" of the Standard Specifications for Public Works Construction, this change order provides an adjustment to the contract as an agreed upon settlement for delays occurring between the contract start date and July 31, 2008, related to issues concerning right-of-way acquisition, shoring, dewatering, and contaminated soil. The time extension granted in this change order is in addition to the extensions previously granted in Change Orders 2, 3, and 4 for other delays that also occurred between the contract start date and July 31, 2008.

Compensation for the above will be as follows:

I. Subcontractors/Vendors' Costs (lump sum amounts):

		Direct Cost (2)	Subcontractor Markup (3)	SSC Markup (4)	SSC 1% Bond	Total
A.	Anderson Air Conditioning	\$18,223.07	\$2,733.46	\$1,297.83	\$222.54	(+) \$22,476.90
B.	JIFFCO	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
C.	Western Paving	\$5,973.88	\$896.08	\$593.50	74.63	(+)7,538.09
D.	Crown Fence	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
E.	Saunders & McMillin	\$2,632.50	(1) \$0.00	\$263.25	\$28.96	(+) \$2,924.71
F.	Phoenix- E	(5) \$0.00	(5) \$0.00	\$1,744.65	316.38	(+) \$2,061.03

		Direct Cost (2)	Subcontractor Markup (3)	SSC Markup (4)	SSC 1% Bond	Total
G.	Frank Smith Masonry	\$3,785.00	\$567.75	\$435.28	\$47.88	(+)\$4,835.91
H.	Talon Plumbing	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
I.	Beard Electric	\$29,352.33	\$4,402.85	\$1,937.76	\$356.93	(+)\$36,049.87
J.	HD Supply	\$14,882.25	(1) \$0.00	\$994.11	\$158.76	(+)\$16,035.13
K.	CE Pickup	\$2,981.00	\$447.15	\$342.82	\$37.71	(+)\$3,808.67
L.	Wacco Scaffolding	\$3,654.00	(1) \$0.00	\$365.40	\$40.19	(+)\$4,059.59
M.	CMC Fontana Steel	\$43,820.58	\$6,573.09	\$2,769.68	\$531.63	(+)\$53,694.98
N.	A & A Ready Mix	\$49,883.17	(1) \$0.00	\$2,744.16	\$526.27	(+)\$53,153.60
O.	Insituform	\$28,752.16	\$4,312.82	\$1,903.25	\$349.68	(+)\$35,317.92
P.	Bragg Crane	\$41,685.30	\$6,252.80	\$2,646.90	\$505.85	(+)\$51,090.85
Q.	Structural Backfill Material	\$76,960.00	(1) \$0.00	\$4,098.00	\$810.58	(+)\$81,868.58
R.	American Monorail	\$11,500.00	(1) \$0.00	\$825.00	\$123.25	(+)\$12,448.25
Subtotal Section I.....						(+)\$387,364.08
Note: (1) Subcontractor or Vendor whose agreed Direct Costs include their markups (2) Labor, material and equipment (3) 15% mark-up for overhead and profit (4) 10% mark-up for overhead and profit on first \$5,000 and 5% mark-up for overhead and profit on portion greater than \$5,000 (5) CCO No. 22 previously approved on 12/30/10 for \$29,893.00 without SSC's markups						

Exhibit A

Los Alamitos Pump Station and Retarding Basin

CCO No. 28 to Agreement No. D07-061

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II. SSC Construction, Inc.'s Costs (lump sum amounts):

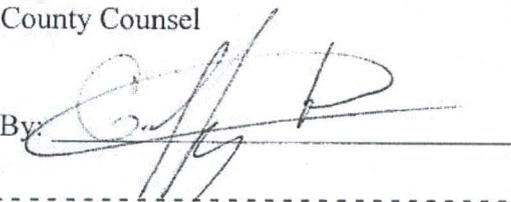
		Direct Cost (1)	Subcontractor Markup (2)	SSC Markup (3)	SSC 1% Bond	Total
A.	Field Overhead Direct Labor	\$94,043.52	Not applicable	(3) \$31,034.36	\$1,250.78	(+)\$126,328.66
B.	Field Overhead Direct Non- Labor	\$63,955.99	Not applicable	(3) \$9,593.40	\$735.49	(+)\$74,284.88
C.	Miscellaneous Material Escalation	\$11,633.01	Not applicable	(3) \$1,744.95	\$133.78	(+)\$13,511.74
D.	SSC Labor Escalation	\$91,861.81	Not applicable	(3) \$30,314.40	\$1,221.76	(+)\$123,397.97
E.	Dewatering (Viking Drillers)	\$43,200.00	(2) \$6,480.00	(3) \$2,734.00	\$524.14	(+)\$52,938.14
F.	Shoring Engineering (Anderson Drilling) (4)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Subtotal Section II.....						(+)\$390,461.39
Note: (1) Labor, material, equipment (2) 15% mark-up for overhead and profit (3) 33% mark-up on labor, 15% mark-up on non-labor/material/equipment; and 10% mark-up for overhead and profit on first \$5,000 and 5% mark-up for overhead and profit on portion greater than \$5,000 (4) CCO No. 20 was approved unilaterally on 11/08/10 for \$3,618.33						

TOTAL SETTLEMENT AMOUNT (+)\$777,825.47

SUMMARY OF CONTRACT COST STATUS:

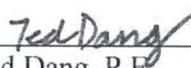
Original Contract award: \$21,706,795.00
Preceding Changes (+)\$2,040,743.83
This Change (+)\$777,825.47
New Estimated Contract Cost \$24,525,364.30
NET CHANGE (ALL CHANGE ORDERS) (+)\$2,818,569.30

Approved as to Form
County Counsel

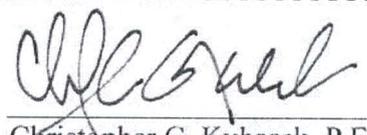
By: 

By reason of this change order, the time for completion shall be extended 92 working days (165 working days minus the 73 working days of time extensions granted in Change Order Nos. 2, 3, and 4) resulting in a new completion date of October 22, 2009.

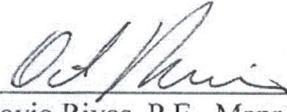
This change order constitutes full compensation for all claims of any nature, including but not limited to claims for direct costs, indirect costs, profits, lost productivity, overhead, impacts, ripple effects, or consequential damages of any nature asserted by SSC Construction, Inc., its subcontractors of any tier, and the suppliers of any of them, arising out of or related to the extension of the time for completion agreed herein.

Submitted By: 
Ted Dang, P.E.
Senior Civil engineer

Approval Recommended:


Christopher G. Kubasek, P.E.
Engineering Supervisor

Approval Recommended:


Octavio Rivas, P.E., Manager
OC Public Works/Inspection

Approved By: _____
Chair, Orange County Board of Supervisors

Date: _____

Signed and certified that a copy of this document
has been delivered to the Chair of the Board per
Government Code Section 25103, Resolution 79-1535.
Attest:

Darlene J. Bloom,
Clerk of the Board of Supervisors
County of Orange, California