



Legislation Details (With Board Report)

File #: WRAG 18-243 **Name:** EPC PSA Termination

Type: WR General Agenda **Status:** Agenda Ready

File created: 11/13/2018 **In control:** Water Resources Agency Board of Directors

On agenda: 11/19/2018 **Final action:**

Title: Consider recommending the Monterey County Water Resources Agency Board of Supervisors:
a. Approve the termination of the Professional Services Agreement to provide program management services for the Interlake Tunnel between the Monterey County Water Resources Agency and EPC Consultants, Inc. effective close of business on January 4, 2019;
b. Approve the award of a professional services agreement to provide program management services for the Interlake Tunnel between the Monterey County Water Resources Agency and COWI, N.A. effective January 1, 2019; and
c. Authorize the General Manager to execute the Professional Services Agreement between the Monterey County Water Resources Agency and COWI, N.A.

Sponsors:

Indexes:

Code sections:

Attachments: 1. Board Report, 2. COWI Professional Services Agreement, 3. COWI NA TUNNELS Brochure, 4. Amendment No. 1 to First Amended PSA, 5. EPC First Amended PSAFinal, 6. Board Order

Date	Ver.	Action By	Action	Result
11/19/2018	1	Water Resources Agency Board of Directors		

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c. Authorize the General Manager to execute the Professional Services Agreement between the Monterey County Water Resources Agency and COWI, N.A.

RECOMMENDATION:

It is recommended that the Monterey County Water Resources Agency Board of Directors recommend that the Monterey County Water Resources Agency Board of Supervisors:

- a. Approve the termination of the Professional Services Agreement to provide program management services for the Interlake Tunnel between the Monterey County Water Resources Agency (“Agency”) and EPC Consultants, Inc. effective close of business on January 4, 2019;
- b. Approve the award of a professional services agreement to provide program management services for the Interlake Tunnel between the Agency and COWI, N.A. effective January 1, 2019; and
- c. Authorize the General Manager to execute the Professional Services Agreement between the Agency and COWI, N.A.

SUMMARY DISCUSSION:

EPC Consultants, Inc. (“EPC”) has provided the services of Ron Drake, P.E. as the Program Manager for the feasibility evaluation of the interlake tunnel between Lakes Nacimiento and San Antonio (“Interlake Tunnel”) since July 2014. Mr. Drake has elected to leave the employment of EPC effective close of business on December 31, 2018 and will be employed by COWI, N.A. (“COWI”), an international engineering firm with extensive experience in the development, design, and construction of tunnel projects. Mr. Drake is committed to continue in the role as Program Manager for the Interlake Tunnel as a COWI employee.

It is in the best interests of the Agency and the Interlake Tunnel to continue with Mr. Drake’s involvement as Program Manager. Agency staff recommends that the Professional Services Agreement (“PSA”) with EPC be terminated as provided in the PSA, and a new PSA with similar terms and conditions be awarded to Mr. Drake’s new employer COWI on a sole-source procurement basis. The justification for the sole-source procurement of professional services to manage the Interlake Tunnel is enumerated as follows:

1. COWI is committed to provide the services of Mr. Drake and others in the performance of a PSA with similar terms, conditions and scope of services as contained in the current PSA with EPC, with the exception of the change as noted in No. 7 below.
2. COWI will retain the two sub-consultants currently engaged by EPC to assist in the environmental and engineering oversight aspects of the Program Management responsibility.
3. COWI brings more extensive expertise in tunnel project development and design than EPC can provide.
4. Mr. Drake has demonstrated proven technical and management competency to lead the Interlake Tunnel development effort on behalf of the Agency, and has irreplaceable project history and understanding. Mr. Drake’s capabilities and Program Management performance are respected by the Agency staff and third parties including regulatory agencies and elected/appointed officials. His contribution to the management and development of the Interlake Tunnel has been invaluable to the Agency, and his continued performance as Program Manager will be very beneficial to the successful implementation of the Interlake Tunnel through all phases of design, environmental clearance, permitting, financing, procurement, and construction.
5. The timely execution of a PSA with COWI will provide a continuation of Program Management services for the Interlake Tunnel without any adverse impact on the development schedule or budget.
6. EPC does not currently have a suitable replacement with the competency or project knowledge of Mr. Drake and therefore cannot adequately perform the Program Management services for the Interlake Tunnel after Mr. Drake’s departure.
7. The indemnification section of the Agreement has been amended given a change in law that became effective on January 1, 2018. SB-496 (2017) amended Civil Code section 2782.8 to state that for design professional service contracts all provisions that purport to have the design professional indemnify the indemnitee for claims against the indemnitee are unenforceable except to the extent that the claims against the indemnitee arise out of, or relate to, the negligence, recklessness or willful misconduct of the design professional. In addition, as revised, Section 2782.8 limits a design professional’s liability for the cost of defense to the design professional’s percentage of fault.

The proposed PSA with COWI will include a not-to-exceed amount that takes into account the balance of monies already paid to EPC through the end of this calendar year. The not-to-exceed amount on the EPC PSA is \$2,866,918. The PSA with COWI will not exceed \$300,000.

OTHER AGENCY INVOLVEMENT

The California Department of Fish & Wildlife and the California Department of Water Resources are other agencies involved in the Interlake Tunnel with dependencies on, and established working relationships with Mr. Drake.

FINANCING:

The recommended action to terminate the PSA with EPC and enter into a new PSA with COWI does not have any financial impact to the Agency. Funding for the Program Management services are reimbursable from the \$10 million DWR Grant received by the Agency for the Interlake Tunnel.

Prepared and Approved by:

David E. Chardavoyne, General Manager, (831) 755-4860

Attachments:

1. PSA between COWI, N.A. and MCWRA
2. COWI, N.A. Brochure
3. First Amended PSA between MCWRA and EPC Consultants
4. Amendment to the First Amended PSA
5. Board Order