

Tab 93

Memorandum

To: CHAIR AND COMMISSIONERS

CTC Meeting: April 7-8, 2010

Reference No.: 2.5e.(3) - **REVISED**
Action Item

From: NORMA ORTEGA
Chief Financial Officer

PASSED BY
CTC
APR 07 2010
CALIFORNIA
TRANSPORTATION COMMISSION

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Division Chief
Transportation Programming

Subject: **ALLOCATION FOR SUPPLEMENTAL FUNDS FOR PREVIOUSLY VOTED PROJECTS
RESOLUTION FA-09-36 13**

RECOMMENDATION:

The Department of Transportation (Department) recommends that the California Transportation Commission (Commission) allocate an additional \$1,500,000 for the New Route 7 project (PPNO 0051G) in Imperial County.

ISSUE:

Additional funds are needed for one previously voted State Transportation Improvement Program (STIP) project in order to close out the contract.

RESOLUTION:

Resolved, that ~~\$1,500,000~~ **\$838,500** be allocated from the Budget Act of 2009, **Budget Act Item 2660-301-0890**, and **\$661,500** from Non Budget Act Item 2660-801-3008, to provide additional funds for the project identified below.

Dist-Co-Rte	Current Budget (All Funds)	Budget Adjustment	Revised Budget	% Increase Above Current Budget
11-Imp-7	\$35,020,000	\$1,500,000	\$36,520,000	4.3%

(\$1,275,000 RIP,
\$225,000 IIP)

PROJECT DESCRIPTION:

The project is located near Calexico on new Route 7, from Rood Road (just south of Route 98) to Route 8. The project constructed a 4-lane expressway.

FUNDING STATUS:

The Commission allocated \$23,420,000 of STIP funding, \$19,907,000 Regional Improvement Program (RIP) and \$3,513,000 Interregional Improvement Program (IIP) for this project in June 2003. The project funding also included \$5,500,000 in Federal Demonstration funds. Supplemental funds of \$6,101,000 for award were approved by the Commission in January 2004 and the project was awarded in February 2004 for \$32,435,000. The total budgeted amount for the project is \$35,020,000.

Although construction was completed in September 2005, an additional \$1,500,000 is needed to pay for the agreed arbitration settlement amount and to close out the construction contract. The \$1,500,000 includes \$1,275,000 in RIP funds and \$225,000 in IIP funds, resulting in an increase of 4.3 percent over the current budget.

REASONS FOR COST INCREASE:

The contractor filed a complaint in arbitration with the Office of Administrative Hearings on September 5, 2006, alleging, in part, to Department caused delays, differing site conditions, and a dispute in quantities due to a change in character of the earthwork item. The complaint initially sought \$5,793,847 in compensatory damages plus costs, interest, and attorney fees. In formal mediation, held in January 2010, the contractor sought \$9,400,000 in total compensatory damages. The parties agreed to settle the case for a total of \$3,100,000. Currently, the unexpended balance for this contract is approximately \$1,600,000. The shortfall is estimated to be \$1,500,000.

Although the Department does not see merit in all the claimed issues, significant exposure exists with several of the issues if the matter were to proceed through legal channels. Primarily the change in character to the earthwork borrow resulting from a shortage of embankment material and differing site conditions lead to increased direct costs and other resulting time related costs. The negotiated agreement settles all outstanding disputed issues and claims, potential claims, notices or protests, (including those of the contractor, sub-contractors and suppliers), whether known or unknown, arising out of or resulting from this contract. Due to the significant exposure to the State, the difficulty in quantifying the results, additional legal fees, and the unpredictable nature of the court system, the settlement offer presents a reasonable and appropriate means to resolve the outstanding issues.

FUNDING OPTIONS:

OPTION A: Approve this request for supplemental funds, as presented above, for \$1,500,000 to close out the construction contract.

OPTION B: Deny this request and require the contractor to pursue legal action.

RECOMMENDED OPTION:

The Department recommends that this request of \$1,500,000, as presented in Option A above, be approved to allow the current construction contract to be closed out.