Legislation Details (With Text)

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Title:	A MOTION extending a waiver from competitive bidding and solicitation requirements for contracts relating to completing the tunnel mining portion Brightwater's BT-3 tunnel.		
Sponsors:	Bob Ferguson		
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Code sections:			
Attachments:	1. 13188.pdf, 2. A. Executive Determination of Emergency and Waiver from Competitive Procurement Requirements for the Brightwater Project's BT-3 Tunnel, 3. 2010-0149 Transmittal Letter.doc, 4. 2010-0149 Staff Report BT-3 waiversr 022410, 5. 2010-0149 Map of proposed Brightwater Treatment Plan, 6. 2010-0149 Staff Report BT-3 waiver khm 3-3-10, 7. 2010-0149 Staff Report BT-3 waiver 031010 khm, 8. A. Executive Determination of Emergency and Waiver from Competitive Procurement Requirements for the Brightwater Project's BT-3 Tunnel, 9. 2010-0149 Staff Report BT-3 waiver (03-11-10)revised sr (2)		

Date	Ver.	Action By	Action	Result
3/15/2010	2	Metropolitan King County Council	Passed	Pass
3/10/2010	2	Committee of the Whole	Recommended Do Pass Substitute	Pass
3/3/2010	1	Committee of the Whole	Deferred	
2/24/2010	1	Committee of the Whole	Deferred	
2/22/2010	1	Metropolitan King County Council	Introduced and Referred	

Clerk 03/11/2010

A MOTION extending a waiver from competitive bidding and solicitation requirements for contracts relating to completing the tunnel mining portion Brightwater's BT-3 tunnel.

WHEREAS, the King County executive on February 18, 2010, issued an Executive Determination of Emergency, declaring that further delays in the mining of Brightwater's BT-3 tunnel and the associated delay in completion of the Brightwater project could result in sanitary sewer overflows and sewer backups in homes and businesses, the loss of usefulness of a planned public facility, the Brightwater treatment plant, and a resulting financial loss to King County and thereby constitutes an emergency, a copy of the determination is attached to

this motion, and

WHEREAS, in accordance with K.C.C. 4.16.050.A. and 12.52.030.B.2., the Executive Determination of Emergency also waived the competitive procurement requirements of state and county law, stating in relevant part as follows:

"In order to respond to such emergency, the requirements of K.C.C. 4.04, 4.16, 4.18, 12.16 and 12.18.095 and, pursuant to RCW 38.52, the requirements of competitive bidding and public notice are hereby waived with reference to any contract relating to county's lease or purchase of supplies, equipment, personal services or public works as defined by RCW 39.04.010 for Brightwater's BT-3 tunnel, or to any contract for the selection and award of professional, technical and construction contracts for the same," and

WHEREAS, under K.C.C. 4.16.050.A. and B., such a waiver stays in effect until terminated by order of the executive, terminated by action of the council by ordinance or it expires, which is ten calendar days after there have been contracts entered into, which combined, encumber funds either in excess of two hundred fifty thousand dollars or in excess of appropriation, unless the council extends the waiver by motion beyond the ten day period, and

WHEREAS, the county executed a contract for construction of the Brightwater Central Conveyance System, including tunnels BT-2 and BT-3, with a joint venture, Vinci/Parsons/RCI/Frontier-Kemper JV ("VPFK"), the members of which have substantial experience in tunneling projects, and

WHEREAS, as a result of VPFK's delays in the tunnel mining of BT-3, the county put VPFK on notice that it was in default of its contractual obligations and allowed VPFK an opportunity to provide a corrective action plan as to how it would remedy or cure its tunnel mining deficiencies in a timely fashion, and

WHEREAS, VPFK has never submitted a satisfactory plan showing how it would remedy or cure its tunnel mining deficiencies; to the contrary, VPFK has stated in the February 15, 2010, Interim Agreement with King County and its February 19, 2010, letter that it forecasts completing the BT-3 tunnel mining no earlier

than December 2012, causing a delay of approximately forty months to the contractual substantial completion date, and

WHEREAS, because construction of the BT-3 tunnel requires a contractor with specialized expertise in tunneling methods and equipment, the county cannot itself assume control of the day-to-day construction of the project, and

WHEREAS, VPFK's failure to timely perform its tunnel mining of the BT-3 tunnel and then its failure to propose and implement a satisfactory corrective action plan were unforeseen events beyond the control of the county, and

WHEREAS, if the completion of the Brightwater project is further delayed, this presents a real and immediate threat to the proper performance of an essential function, the construction and completion of Brightwater, a major regional waste water conveyance and treatment facility, and

WHEREAS, if the completion of the Brightwater project is further delayed this will likely result in material loss or damage to property, bodily injury or loss of life if immediate action is not undertaken to contract for more rapid completion of the project, including the increased likelihood that sanitary sewer overflows and sewer backups in homes and businesses will occur as well as result of the material loss of the use of the Brightwater treatment plant facility for potentially an additional two years, and

WHEREAS, the executive intends to negotiate and execute a contract with another contractor to complete the remaining BT-3 tunnel mining scope of work in VPFK's Central Conveyance System contract, and

WHEREAS, the facts set forth in the preceding clauses and in the executive's Determination of Emergency and waiver establish an emergency as defined by King County Code and RCW 39.04.280, and

WHEREAS, the executive is designated by code as the person to act in the event of an emergency to declare that an emergency situation exists, waive competitive bidding requirements and award all necessary contracts on behalf of the county to address the emergency situation, and

WHEREAS, an extension of the waiver from the competitive procurement requirements of state law and K.C.C. chapter 4.16 is necessary at this time because contracts or amendments to existing contracts are required to investigate how to complete the mining for the BT-3 tunnel and to make the necessary connections between the tunnel segments; these contracts or amendments will exceed two hundred fifty thousand dollars and start the ten day expiration period for the waiver, and

WHEREAS, further contracting with JayDee Coluccio Taisei ("JCT"), the general contractor on the Brightwater West Conveyance System, and others will be necessary to address the emergency, and

WHEREAS, a cost-loaded project schedule would provide King County with better information necessary for project oversight on any contract entered into to complete the tunnel mining of the BT-3 tunnel;

NOW, THEREFORE, BE IT MOVED by the Council of King County:

A. The council finds that unforeseen circumstances beyond the control of the county, as set forth in the preceding clauses of this motion, present a real and immediate threat to the proper performance of an essential function and also will likely result in the material loss of county property and also likely result in injury to property and persons if immediate action is not taken, which constitutes an emergency.

B. The February 18, 2010, waiver of the competitive bidding and solicitation requirements of state law and K.C.C. chapter 4.16 is extended through December, 31, 2011, in order to acquire construction and other required services to complete the tunnel mining, including tunnel boring machine removal, ground improvement and underground connection for the BT-3 tunnel.

C. The extension of the waiver has the following conditions:

1. This extension of the waiver shall not apply to any construction contract with JCT, or with others, including, but not limited to, work orders and change orders to existing contracts to complete the tunnel mining for BT-3 ("the new mining contract"), until after the executive has transmitted to the council copies of the terms and conditions of the new mining contract as well as a cost-loaded new mining contact project schedule, and reports and provides a briefing to the King County council's committee of the whole on the new mining

contract and its cost-loaded schedule. The elements of a cost-loaded schedule are set forth in subsection C.6. of this motion;

2. Such a report and briefing shall occur after JCT, or other contractor, has executed the new mining contract, but before the executive or the executive's designee executes the new mining contract;

3. Should the executive delete any further construction work from VPFK's Central Conveyance System, including tunnels BT-2 and BT-3, the waiver extension shall not apply to any construction contract with any replacement contractor, until after the executive has transmitted to the council copies of the terms and conditions of the replacement contract as well as a cost-loaded project schedule, and reports and provides a briefing to the King County council's committee of the whole on any replacement contract and its cost loaded schedule;

4. Such a report and briefing shall occur after the replacement contractor has executed the replacement contract, but before the executive or his designee executes the replacement contract;

5. If the county enters into any contract relating to completing the BT-3 tunnel under the Executive Determination of Emergency or under this motion extending the waiver from competitive procurement, the executive shall report this information in the existing required monthly report and the county auditor shall include an evaluation of this information in the quarterly oversight reports to the council. The report shall include, at minimum, the following information:

a. the vendor;

b. the type of work;

c. description of how the contract or change order meets the purpose of the emergency waiver;

d. the type of document, such as, but not limited to, contract or change order;

e. a description of the contract or change order;

f. the duration of the contract or change order;

g. the dollar amount for the contract or change order;

h. the schedule for completion of work;

i. the method of measuring payment, such as, but not limited to, fixed price, unit price, time and materials;

j. if applicable, any modifications made to previously reported contracts or change orders that changes the information provided in prior reports to meet the requirements in subsection C.5. (a) through (i) of this motion; and

k. with regard to the all non-construction costs, such as, but not limited to design, construction management services and contract administration, performed by WTD staff and consultants, a comparison of actual costs to WTD's initial estimate of these non-construction costs needed to implement and administer contracts executed under the waiver and its extension;

6. After execution of the new mining contract, WTD shall prepare and provide to the auditor's office a new monthly report that compares the actual work completed in the preceding month and the cost of that work against the cost-loaded project schedule for the new contract. For purposes of the new mining contract, the cost -loaded project schedule shall include:

a. the percentage of completion of the contract based on the executed dollar amount for the contract;

b. the percentage of completion of the contract based on the schedule for completion of the contract;

c. the percentage of completion toward any identified milestones in the contract;

d. graphic presentations of the information, such as, but not limited to, cash flow curve; and

e. this new monthly report shall be due to the auditor's office by the fifteenth of each month and shall be provided in electronic form suitable for verification of calculations reported;

7. The council may, by motion, either lengthen or shorten the extension of this waiver at any time; and

8. The council may, by motion, require the executive to terminate contracts entered into under this emergency that exceed fifty thousand dollars, including, but not

limited to, work orders and change orders to existing contracts, in accordance with the termination provisions

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described in K.C.C. 4.16.050.C.