

BACKGROUND

On January 24, 2013, by Resolution No. 13-6, the Board authorized the Executive Director to accept \$3,543,750 from the Department of Homeland Security/Federal Emergency Management Agency for three security projects at the Port, including \$1,417,500 for the Security Fiber Optic Network Expansion and Redundancy Project (Project). At the same meeting, by Resolution No. 13-8, the Board also authorized a maximum construction contract amount of \$1,560,000 for the Project. Subsequent to accepting the funds and the receipt of bids for the work, Tennyson Electric, Inc (Tennyson) was awarded the project to install fiber optic cable from the Port's Harbor Facilities complex to the City of Oakland's Emergency Operations Center for a Total Contract Price of \$1,296,300.00. An additional 10%, or \$129,630.00 is authorized as change order contingency.

The project included installing approximately 60,000 linear feet of fiber optic cables and setting up the network connections to tie in to the Port's existing security infrastructure.

During construction, Tennyson encountered unforeseen conditions that impacted their schedule and the conduit installation work as originally bid. The issuance of a building permit from the City took longer than anticipated. In addition, a significant amount of unknown utilities encountered during the conduit installation work further delayed the contractor's progress. The combination of the extra work and a grant deadline of project completion by December 31, 2014, resulted in increased costs to the contractor beyond the 10% change order contingency authorized by the Board.

ANALYSIS

Based on the contract documents, the contractor had bid the project using the rock-wheel method. The City of Oakland had initially approved the contractor's building permit utilizing this method but subsequently revoked the permit due to the discovery of significant unknown utilities. In addition, the conduit alignment had to be rerouted as the work required to avoid the existing utilities in the original alignment would have been more expensive and time consuming. The contractor had to resubmit documents for a new permit. Port staff worked with the contractor and the City of Oakland to reduce the cost to reroute the new conduits by locating and using some of the existing City of Oakland conduits where feasible. In addition, Port staff also worked with the contractor to re-sequence their work to minimize the impacts to the overall schedule and maximize the amount of work that can be completed within the grant deadline. The Port and the

contractor negotiated the cost of all the additional work and schedule delays to the contract and agreed on a change order amount which would result in an aggregated total change order amount of \$293,168.83 for the entire project, which exceeds the approved change order contingency by \$163,538.83 and requires Board approval. However, no budget authority increase for the contract is requested as the total construction cost remains below the previously authorized maximum contract amount of \$1,560,000. A breakdown of the final construction cost is as follows:

	Original Contract Amount as Awarded	Final Contract Cost (including Change Orders)	Comments/Description of Variance
Total Contract Amount	\$1,296,300.00	\$1,199,471.40	Bid Quantity Variations
Change Orders	\$ 129,630.00	\$ 293,168.83	Original authority limited to 10% of contract price. Board Authority requested for the variance of \$163,538.83.
Permits	\$ 43,265.85	\$ 43,265.85	Permits are reimbursed at actual cost
TOTAL CONSTRUCTION COST	\$ 1,469,195.85	\$1,535,906.08	Maximum Contract Amount Authorized by Board is \$1,560,000.00

BUDGET & STAFFING

The approved budget for this project is \$2,206,000, including \$1,560,000 for construction and \$240,000 for consultant services. The request for an increase in the change order authority does not require an increase in the project budget.

No change in staffing is required as a result of this agenda report.

MARITIME AVIATION PROJECT LABOR AGREEMENT (MAPLA)

The provisions of the Port of Oakland Maritime and Aviation Project Labor Agreement (MAPLA) apply to this contract, including the change order work.

STRATEGIC PLAN

The action described herein would help the Port achieve the following goals and objectives in the Port's Strategic Plan

(<http://www.portofoakland.com/pdf/about/strategicPlan2011-2015.pdf>)

- Goal A: Objective 1: Maximize the use of existing assets.
- Goal E: Objective 5: Prepare plans for long term use, development and management of Port property and infrastructure

LIVING WAGE

Living wage requirements, in accordance with the Port's Rules and Regulations for the Implementation and Enforcement of the Port of Oakland Living Wage Requirements (the "Living Wage Regulations") do not apply because the contract is a construction contract covered by state prevailing wage rules and the prevailing rate of wage is higher than the wage required by the Living Wage Regulations.

This change order increase request is not subject to the Living Wage requirements.

ENVIRONMENTAL

The proposal to increase the change order limit for the Security Fiber Optic Network Expansion and Redundancy Project was reviewed in accordance to the requirements of the California Environmental Quality Act (CEQA) and Port CEQA Guidelines.

The general rule in Section 15051(b)(3) of the CEQA Guidelines states that CEQA applies only to activities that have a potential for causing a significant effect on the environment. It can be seen with certainty that there is no possibility that authorizing the Executive Director to increase the change order limit for the Security Fiber Optic Network Expansion and Redundancy Project will result in a physical change in the environment, and therefore this action is exempt from CEQA.

Furthermore, the completed construction activities were described and reviewed for environmental impacts in the Initial Study/Negative Declaration (IS/ND) for the Maritime Utilities Upgrade Project, adopted by the Board on May 18, 2010.

Therefore, no further environmental review or documentation is necessary in order for the Board to take the actions recommended in this Agenda Report.

GENERAL PLAN

Pursuant to Section 727 of the City of Oakland Charter, this project has been determined to conform to the policies for the transportation designation of the Oakland General Plan.

OWNER-CONTROLLED INSURANCE PROGRAM (OCIP) PROFESSIONAL LIABILITY INSURANCE PROGRAM (PLIP)

As the construction change order is a capital improvement project, the applicable Owner Controlled Insurance Program (OCIP) coverages and provisions apply to the construction phase.

OPTIONS

1. Authorize an increase in the change order authority for the amount requested and allow staff to execute a change order for work as negotiated and agreed upon with the contractor.
2. Do not authorize an increase in the change order authority. This would result in the contractor filing a claim to recover their costs, which may exceed the amount requested above.

RECOMMENDATION

Staff recommends that the Board authorize an increase of \$163,858.83 in change order authority for the contract with Tennyson Electric, Inc. for a total contract cost of \$1,535,906.08



**BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND**

RESOLUTION AUTHORIZING AND APPROVING AN INCREASE OF \$165,538.83 TO THE CHANGE ORDER AUTHORITY LIMIT TO THE CONTRACT WITH TENNYSON ELECTRIC, INC. (LIC. NO. 717998) FOR THE SECURITY FIBER OPTIC NETWORK EXPANSION AND REDUDANCY PROJECT, OAKLAND, CALIFORNIA, FOR A TOTAL AGGREGATE CHANGE ORDER AMOUNT NOT TO EXCEED \$293,168.83.

WHEREAS, the Board of Port Commissioners ("Board") has reviewed and evaluated the Agenda Report Item 2.1 dated January 29, 2015 ("Agenda Report") and related agenda materials, has received the expert testimony of Port of Oakland ("Port") staff, and has provided opportunities for and taken public comment; and

WHEREAS, on January 24, 2013, by Resolution No. 13-8, the Board authorized solicitation and award of a contract for the Security Fiber Optic Network Expansion and Redundancy, Oakland, California DHS Grant No. EMW-2012-PU-00191 ("Security Fiber Optic Network"); and

WHEREAS, on March 20, 2014, the Executive Director approved the award of a contract for the Security Fiber Optic Network project to Tennyson Electric, Inc., ("Tennyson"), in the amount of \$1,296,300; and

WHEREAS, that in acting upon this matter, the Board has exercised its independent judgment based on substantial evidence in the record and adopts and relies upon the facts, data, analysis, and findings set forth in the Agenda Report, and in related agenda materials and in testimony received:

Now, therefore, be it resolved as follows:

SECTION 1. Based upon the information contained in the Agenda Report, and testimony received, the Board finds that:

A. It is in the best interest of the Port to authorize an increase to the change order authority limit for the **Security Fiber Optic Network** project in the total aggregate amount of \$293,168.83, for a total contract cost of \$1,535,906.08;

B. It is in the best interest of the Port to authorize the Executive Director to negotiate and execute additive change orders with Tennyson, under the contract for the **Security Fiber Optic Network** project, pursuant to Port Ordinance No. 1606, Section 5.j.5(iii)(a), for the performance of work related to unforeseen conditions.

SECTION 2. The Board hereby approves an increase of \$165,538.83 to the change order authority limit, for a total aggregate change order amount of \$293,168.83.

SECTION 3. The Board hereby authorizes the Executive Director to negotiate and execute additive change orders with Tennyson for the **Security Fiber Optic Network** project, in a total aggregate amount not to exceed \$293,168.83, (which is the current contract change authority of \$129,630.00, plus the additional \$163,538.83 hereunder).

SECTION 4. The actions requested in this Agenda Report fall within the scope of the Port Maritime and Aviation Project Labor Agreement ("MAPLA"), and the provisions of the MAPLA apply.

SECTION 5. The California Environmental Quality Act ("CEQA") Guidelines state that CEQA applies only to activities that have a potential to cause a significant effect on the environment. It can be seen with certainty that there is no possibility that ratifying a change order to the contract for the **Security Fiber Optic Network** project will result in a physical change in the environment; therefore this action is exempt from CEQA.

SECTION 6. This resolution is not evidence of and does not create or constitute (a) a contract, or the grant of any right, entitlement or property interest, or (b) any obligation or liability on the part of the Board or any officer or employee of the Board. This resolution approves and authorizes the execution of an agreement(s) in accordance with the terms of this resolution. Unless and until a separate written agreement(s) is duly executed on behalf of the Board as authorized by this resolution, is signed and approved as to form and legality by the Port Attorney, and is delivered to other contracting party, there shall be no valid or effective agreement(s).