



# San Bernardino County

## Legislation Text

**File #: 3470, Agenda Item #: 43**

### REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS OF THE BOARD GOVERNED COUNTY SERVICE AREAS AND RECORD OF ACTION

**January 5, 2021**

#### **FROM**

**BRENDON BIGGS, Director, Department of Public Works - Special Districts**

#### **SUBJECT**

Contract with Tetra Tech, Inc. for the Lake Arrowhead Inundation Mapping Project

#### **RECOMMENDATION(S)**

Acting as the governing body of County Service Area 70, D1 (Lake Arrowhead Dam), approve contract, including nonstandard terms, with Tetra Tech, Inc. in the amount of \$54,250 to provide engineering services for the Lake Arrowhead Inundation Mapping Project with a term of January 5, 2021 through June 5, 2021. (Presenter: Trevor Leja, Deputy Director, 386-8811)

#### **COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES**

**Operate in a Fiscally-Responsible and Business-Like Manner.**

**Provide for the Safety, Health and Social Service Needs of County Residents.**

#### **FINANCIAL IMPACT**

Approval of this item will not result in the use of Discretionary General Funding (Net County Cost) as costs of the subject contract, not to exceed \$54,250, will be funded through existing revenue of CSA 70, D1 (Lake Arrowhead Dam). This district has sufficient appropriation available in its 2020-21 budget for the contract with Tetra Tech, Inc. (Tetra Tech).

The following is detail of the cost proposal submitted by Tetra Tech:

<b><i>Task</i></b>	<b><i>Cost</i></b>
Task 1: Project Management/Coordination/Meetings/Miscellaneous Follow-Up	\$5,200
Task 2: Modeling and Mapping	\$39,800
Task 3: Future Additional Services (20% of Task 1 and Task 2)	\$9,000
Other Direct Costs	\$250
Not-to-Exceed Total	\$54,250

#### **BACKGROUND INFORMATION**

Tetra Tech originally prepared an inundation mapping study for Lake Arrowhead, dated August 17, 2011. The extent of the original study terminated at the Mojave Forks Dam (also known as Mojave River Dam) near Hesperia. The California Division of Safety of Dams (DSOD) recently requested that mapping be continued

downstream of the Mojave Forks Dam (in the Mojave River).

In accordance with this recommended contract, Tetra Tech will prepare dam breach inundation maps for areas downstream of Lake Arrowhead to supplement its original study prepared in 2011. The DSOD has requested that inundation maps in the 2011 study be extended downstream from the Mojave Forks Dam to a point where the flood wave no longer poses a threat to life or critical facilities. Preliminary evaluation suggests this modeling termination point is located approximately 40 miles east of Barstow, or approximately 100 miles downstream of Mojave Forks Dam. Flows will pass through the cities of Hesperia, Victorville, and Barstow. The Tetra Tech contract contains Indemnification and Limitation of Liability that are not standard to County contracts, and thus require approval from the Board of Supervisors (Board). Tetra Tech has taken the position that its changes to the contract are not negotiable. The work has been mandated by DSOD.

The following are the non-standard Indemnification and Limitation of Liability requirements:

1. Consultant agrees to standard County design indemnity and Infringement Indemnity. For purposes of general indemnity, consultant will only agree to indemnify County for claims, actions etc., resulting from its own negligence (Section G.1).
  - The County's Standard general indemnity requires the contractor to indemnify the County for claims arising under the contract from any cause whatsoever, excluding the County's sole negligence or willful misconduct.
  - Potential Impact: The indemnity provision is narrower than the County's standard indemnity provision. This is not unexpected given the nature of the services and related risk. Consultant's primary services will be governed by the provisions relating to design indemnity and infringement indemnity, both of which contain standard County language.
2. Consultant has included a limitation of liability which states it shall not be liable for special, incidental, consequential losses or damages. Also, the total liability of Consultant under the contract shall not exceed the compensation received by Consultant under the contract; however, for claims covered by insurance, Consultant's liability shall not exceed \$1,000,000, excluding Consultant's gross negligence, willful misconduct and violations of law (Section G.11.8).
  - County standards terms allow for a limitation of liability in an acceptable amount determined by the Risk Manager, excluding indemnification obligations, willful misconduct and violations of law by the contractor.
  - Potential Impact: Claims could exceed the liability cap, leaving the County financially liable for the excess. The County's liability under the contract is not similarly limited. Consultant has refused to exclude its indemnity obligations from the cap.

County Policy 11-05 requires Board approval of the non-standard contract provisions discussed above.

If Tetra Tech makes any revisions to the scope of service, cost requirements, or any changes which exceed the stated total of \$54,250 during the term of this contract, County Counsel will review the changes to determine if the Department of Public Works - Special Districts needs to obtain additional approval from the Board.

## **PROCUREMENT**

This is a non-competitive procurement. Since Tetra Tech originally prepared the inundation mapping for Lake Arrowhead in 2011, it is recommended that Tetra Tech be contracted for the supplemental work requested by DSOD. Continuing with the services of Tetra Tech rather than having a complete new study performed will produce a cost savings for CSA 70, D1 (Lake Arrowhead Dam) while keeping consistent with the Engineer of Record. Purchasing concurs with the non-competitive justification of specialized credentials for this work.

**REVIEW BY OTHERS**

This item has been reviewed by County Counsel (Katherine Hardy, Deputy County Counsel, 387-5455) on November 20, 2020; Purchasing (Bruce Cole, Supervising Buyer, 387-2148) on December 15, 2020; Finance (Tom Forster, Administrative Analyst, 387-4635) on December 14, 2020; and County Finance and Administration (Matthew Erickson, County Chief Financial Officer, 387-5423) on December 15, 2020.