



MOUNTAINS RECREATION & CONSERVATION AUTHORITY

Los Angeles River Center & Gardens
570 West Avenue Twenty-six, Suite 100
Los Angeles, California 90065
Phone (323) 221-9944

MEMORANDUM

TO: The Governing Board

FROM:  Joseph T. Edmiston, FAICP, Hon. ASLA, Executive Officer

DATE: May 6, 2015

SUBJECT: **Agenda Item VIII: Consideration of resolution adopting findings that the Malibu Road Accessway construction project is substantially complex and to increase the retention amount from 5% to 10%.**

Staff Recommendation: That the Governing Board adopt the attached resolution adopting findings that the Malibu Road Accessway construction project is substantially complex and to increase the retention amount from 5% to 10%.

Background: As of January 1, 2012 a new section of the Public Contract Code Section 7201 reduced the amount that public agencies can retain from contractors on public works construction projects from 10% to 5%, unless the project is found to be a "complex project". A retention is a contractual withholding of money held by MRCA to cover any unexpected expenses such as liens or poor workmanship that may occur before the project is completed and accepted. The standard procedure is to pay the retained amount once all of the following occur: work is fully completed, MRCA inspects and accepts work, Contractor submits all items required under the contract, all lien periods expire, and 60 days pass after MRCA files a Notice of Completion with the County Clerk. Regardless of retention, public agencies still have the right to withhold 150% of the value of any disputed amount of work from the final payment, and in the event of a good faith dispute, are not required to pay for work that is not approved or accepted in accordance with the proper plans or specifications.

Section 7201(b) provides in part that "The retention proceeds withheld from any payment by a public entity from the original contractor... shall not exceed 5 percent of the payment. In no event shall the total retention proceeds withheld exceed 5 percent of the contract price." However, Section 7201(b)(4) provides, in part, that an awarding agency may withhold in excess of five percent (5%) on specific projects where the governing body has approved a finding during a properly noticed and normally scheduled public hearing and prior to bid that the project is substantially complex and therefore requires a higher retention amount than 5 percent. The

awarding entity shall include both this finding and the actual retention amount in the bid documents.

Plans for the Malibu Road Accessway project are currently being permitted by the City of Malibu, and the project is expected to be ready for bidding within the next month. The project includes the construction of a new public beach access staircase, educational, rules, and regulations signs, visually permeable fence, and gate. The four public parking spaces that run parallel to the site will be paved and one will be designated as ADA accessible.

The Malibu Road Accessway construction project entails work in the Coastal Zone and directly on the beach, adjacent to private property in a residential neighborhood, and partially within a narrow City of Malibu road Right-of-Way. Access to the site from the beach below is necessary but cannot significantly impact public access, and the beach route to the site is constrained in several places. The general public and neighboring residents will be subject to inconvenience during construction, and are expected to have a high level of interest in the project.

The geology of the site includes historic landslides in addition to oceanographic forces, and the road is partially constructed upon a retaining wall. The immediate proximity to the Pacific Ocean means that storm water prevention and erosion control will be critical. Work on the beach is subject to wave impact, especially during storm events. Work on the slope is subject to erosion during rain events. Both storm and rain events become more likely the longer the work remains unfinished. The potential damage to coastal resources during construction is significant.

Work of this nature is not regularly, customarily or routinely performed by MRCA or licensed contractors. Based on the project scope and factors described above, staff recommends that the board make a finding that the project is substantially complex.