



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

March 15, 2010

Motion 13188

Proposed No. 2010-0149.2

Sponsors Ferguson

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

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

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

15 "In order to respond to such emergency, the requirements of K.C.C. 4.04,
16 4.16, 4.18, 12.16 and 12.18.095 and, pursuant to RCW 38.52, the
17 requirements of competitive bidding and public notice are hereby waived
18 with reference to any contract relating to county's lease or purchase of
19 supplies, equipment, personal services or public works as defined by RCW

20 39.04.010 for Brightwater's BT-3 tunnel, or to any contract for the
21 selection and award of professional, technical and construction contracts
22 for the same," and

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

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

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

37 WHEREAS, VPFK has never submitted a satisfactory plan showing how it would
38 remedy or cure its tunnel mining deficiencies; to the contrary, VPFK has stated in the
39 February 15, 2010, Interim Agreement with King County and its February 19, 2010,
40 letter that it forecasts completing the BT-3 tunnel mining no earlier than December 2012,
41 causing a delay of approximately forty months to the contractual substantial completion
42 date, and

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

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

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

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

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

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

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

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

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

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

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

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

87 B. The February 18, 2010, waiver of the competitive bidding and solicitation
88 requirements of state law and K.C.C. chapter 4.16 is extended through December, 31,
89 2011, in order to acquire construction and other required services to complete the tunnel
90 mining, including tunnel boring machine removal, ground improvement and underground
91 connection for the BT-3 tunnel.

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

93 1. This extension of the waiver shall not apply to any construction contract with
94 JCT, or with others, including, but not limited to, work orders and change orders to
95 existing contracts to complete the tunnel mining for BT-3 ("the new mining contract"),
96 until after the executive has transmitted to the council copies of the terms and conditions
97 of the new mining contract as well as a cost-loaded new mining contract project schedule,
98 and reports and provides a briefing to the King County council's committee of the whole
99 on the new mining contract and its cost-loaded schedule. The elements of a cost-loaded
100 schedule are set forth in subsection C.6. of this motion;

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

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

109 briefing to the King County council's committee of the whole on any replacement
110 contract and its cost loaded schedule;

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

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

120 a. the vendor;

121 b. the type of work;

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

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

125 e. a description of the contract or change order;

126 f. the duration of the contract or change order;

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

128 h. the schedule for completion of work;

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

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

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

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

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

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

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

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

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

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

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

159 limited to, work orders and change orders to existing contracts, in accordance with the
160 termination provisions described in K.C.C. 4.16.050.C.

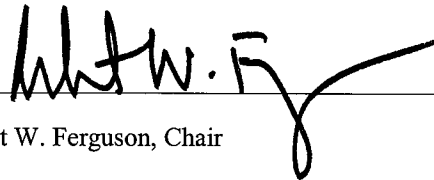
Motion 13188 was introduced on 2/22/2010 and passed by the Metropolitan King
County Council on 3/15/2010, by the following vote:

Yes: 6 - Ms. Drago, Mr. Phillips, Mr. Gossett, Ms. Patterson, Ms.
Lambert and Mr. Dunn

No: 0


Excused: 3 - Mr. von Reichbauer, Ms. Hague and Mr. Ferguson

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON



Robert W. Ferguson, Chair

ATTEST:



Anne Noris, Clerk of the Council

Attachments: A. Executive Determination of Emergency and Waiver from Competitive Procurement
Requirements for the Brightwater Project's BT-3 Tunnel

Attachment A

13188



King County

**EXECUTIVE DETERMINATION OF EMERGENCY AND WAIVER
FROM COMPETITIVE PROCUREMENT REQUIREMENTS FOR
THE BRIGHTWATER PROJECT'S BT-3 TUNNEL**

WHEREAS, King County is constructing Brightwater, a new regional treatment plant to serve northern King and southern Snohomish Counties; and

WHEREAS, the Brightwater project's 13-mile conveyance tunnel consists of the East Tunnel, West Tunnel and two Central Tunnels (BT-2 and BT-3 tunnels); and

WHEREAS, tunneling was completed on the East Tunnel (BT-1 Tunnel) in November 2008 and tunneling of the West Tunnel (BT-4 tunnel) is rapidly nearing completion; and

WHEREAS, the BT-2 and BT-3 tunnels have experienced lengthy construction delays that have impacted the project schedule and resulted in a delay in the projected completion date for the Brightwater project; and

WHEREAS, delays in starting up the Brightwater project may result in sanitary sewer overflows and sewer backups into homes and businesses and result in King County and its ratepayers being subject to enforcement actions and penalties for failing to provide capacity and failing to meet its National Pollutant Discharge Elimination System permit requirements; and

WHEREAS, the BT-2 tunnel boring machine has been idle for eight months while the contractor, Vinci/Parsons RCI/Frontier-Kemper JV (VPFK), for the Central tunnels has performed repairs leading to the resumption of mining this week; and

WHEREAS, the BT-3 tunnel boring machine has also been idle for eight months while VPFK has been planning, designing and implementing a repair process similar to that undertaken on BT-2; and

WHEREAS, the BT-3 tunnel boring machine has been moved to its designated repair location at 53rd Avenue NE and NE 195th Street (STA 820+00) where three additional months will be required to perform substantial repairs and VPFK's willingness to continue mining beyond 53rd Avenue NE is in question; and

WHEREAS, VPFK estimates completion of the BT-3 tunnel will cost approximately \$98 million and, based on VPFK's schedule, King County staff believes completion of the Brightwater project would be delayed until December 2013; and

WHEREAS, King County asserts VPFK is in default of its obligations because, among other things, the contractor cannot achieve substantial completion of all work by November, 23, 2010, as required by the contract; and

WHEREAS, Jay Dee/Coluccio/Taisei JV (JCT), the West Tunnel (BT-4) contractor, has expressed an interest in performing the remaining tunnel work for the BT-3 tunnel from the Ballinger shaft to 53rd Avenue NE and NE 195th Street (STA 820+00); and

WHEREAS, King County Wastewater Treatment Division staff have assessed the situation and believe there is a substantial likelihood that JCT can complete the remaining mining work for the BT-3 tunnel at a lower cost and in significantly less time; and

WHEREAS, the timely execution of a contract amendment between JCT and King County to complete the mining for the BT-3 tunnel is critical because the BT-4 tunnel boring machine is near the shaft where it will complete its mining operations; and

WHEREAS, the King County Wastewater Treatment Division has issued a temporary stop work order to the BT-4 tunnel contractor, JCT, to allow for any changes in tunnel alignment should the county contract with JCT to complete the remaining mining for the BT-3 tunnel; and

WHEREAS, the cost to King County of suspending mining for the BT-4 tunnel under the temporary stop work order is approximately \$50,000 per day and is required to preserve the option of amending its contract with JCT to use the BT-4 tunnel boring machine to complete the BT-3 tunnel; and

WHEREAS, any further delay in completing the BT-3 tunnel presents a real impediment to the completion of the Brightwater project and, therefore, substantially impacts the usefulness of a public facility and may result in a financial loss to King County; and

WHEREAS, this emergency declaration is an initial step to allow the King County Wastewater Treatment Division to request information from JCT regarding the cost and schedule for completion of the remaining mining on the BT-3 tunnel; and

WHEREAS, an emergency waiver of competitive bidding and formal solicitation requirements of state and county law is necessary to prevent immediate impacts to public health and safety and the environment and prevent further financial loss to the County associated with the delays in the mining of Brightwater's BT-3 tunnel.

NOW, THEREFORE, THE KING COUNTY EXECUTIVE, DOW CONSTANTINE, DETERMINES AND DECLARES AS FOLLOWS:

SECTION 1

Any further delay in schedule for Brightwater's BT-3 tunnel will result in immediate risk to public health and safety and the environment, impact the usefulness of

a public facility and could result in a financial loss to the county, and thereby constitutes an emergency, pursuant to K.C.C. 12.52 and K.C.C. 4.16.050.

SECTION 2

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.

DATED this 18th day of February, 2010



DOW CONSTANTINE, King County Executive
State of Washington

